



PLANNING | DEVELOPMENT | URBAN DESIGN



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FILED ON  
23 AUG 2023

# STATEMENT OF ENVIRONMENTAL EFFECTS

S4.56 APPLICATION IN RELATION TO  
APPROVED SHOPTOP HOUSING  
DEVELOPMENT

1 BILAMBEE AVENUE, BILGOLA PLATEAU



This application is submitted to Northern Beaches Council pursuant to section 4.56 of the *Environmental Planning and Assessment Act 1979* to amend the development consent DA2020/1351 (“the consent”), being for *demolition works and construction of shop-top housing* (“the development”), at No. 1 Bilambee Lane, Bilgola Plateau (Lot 5 DP 229309).



**Figure 1: Location of subject site**

The original development application (DA2020/1351) was approved by way of a section 34 Agreement in the NSW Land & Environment Court (*Macri v Northern Beaches Council [2021] NSWLEC 1685*).

The proposed modifications primarily include the reduction of the proposed retail floor area and the removal of one basement parking level; deletion of condition No 17 and modification of Condition No 63.

The modified mixed-use development is proposed to contain two retail tenancies at ground floor level below two storeys of residential apartments containing seven dwellings. The development is to be serviced by one level of basement car parking containing 17 parking spaces. Vehicular connectivity to the on-site basement parking area is proposed to be retained via the approved access driveway connecting with Bilambee Lane in the northern corner of the site.

A comprehensive list of modifications sought is provided in Section 3.0 of this Statement.

This application is not a review of the approved land use or previously approved works on the site. The application is submitted pursuant to the provisions of Pittwater Local Environmental Plan 2014. This statement of environmental effects has been undertaken to assess the proposal in terms of section 4.15 and 4.56 of the *Environmental Planning and Assessment Act 1979* and concludes that the application is worthy of approval on its merits.

## **2.0 RELEVANT LEGISLATION**

As the original approval was granted by the Court, the power to modify is vested in s4.56 in lieu of s4.55(1A) or s4.55(2). The provisions of s4.56 allow the Council to determine the application as long as:

- It is still substantially the same;
- It has notified the application and considered submission/s;
- It undertakes an assessment under s4.15.

The provisions are reproduced below:

### **4.56 Modification by consent authorities of consents granted by the Court**

*(cf previous s 96AA)*

*(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 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*

*(b) 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*

*(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*

*(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.*

*(1A) 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.*

*(1B) (Repealed)*

*(1C) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*

*(2) After determining an application for modification of a consent under this section, the consent authority must send a notice of its determination to each person who made a submission in respect of the application for modification.*

*(3) The regulations may make provision for or with respect to the following—*

*(a) the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,*

*(b) the effect of any such deemed determination on the power of a consent authority to determine any such application,*

*(c) the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.*

*(4) (Repealed)*

### **3.0 PROPOSED S4.56 AMENDMENTS**

The proposal seeks approval to modify the development approval pursuant to section 4.56 of the *EP&A Act 1979*, as shown on the submitted plans prepared by *Artiva Architects*, Job No. 2146, dated 18 July 2023.

The amendment will update the list of approved plans, being Condition 1. *Approved Plans and Supporting Documentation* of DA2020/1351, as outlined in Section 3.2 below and conditions of consent as outlined in Section 3.4 below.

### 3.1 Comparison of Development Statistics

In relation to the development statistics for the proposal, a comparison is provided as follows:

| <b>Original DA2020/1351</b>  | <b>S4.56 Modification</b>   |
|--|---|
| Approved Retail GFA:<br>Retail A - 119.1m <sup>2</sup><br>Retail B - 318.8m <sup>2</sup><br>Total: 436.9m <sup>2</sup>                     | Proposed modified retail GFA:<br>Retail A: 110.0m <sup>2</sup><br>Retail B: 69.1m <sup>2</sup><br>Total 179.1m <sup>2</sup> (less 257.8m <sup>2</sup> )   |
| Approved parking: two basements containing 30 parking spaces + 7 indented parking spaces within Bilambee Lane.                             | Proposed parking: one basement containing 17 spaces. Bilambee Lane spaces remain unchanged.   |
| No. of Residential Units: 7<br>Dwelling mix: 4 x 2br; 3 x 3br  | No change.  |
| Parking allocation:<br>Residential: 16<br>Residential visitor: 3<br>Retail: 6 on-street + 11 on-site<br>Loading bay: 1<br>Total: 37 spaces | Parking allocation:<br>Residential: 14<br>Residential visitor: 3<br>Retail: 6 on-street<br>Loading bay: 1<br>Total: 24 spaces   |
| Bicycle parking: 12 on-site + 12 within public domain<br>Motorcycle parking: 4   | Bicycle parking: 6 on-site + 12 within public domain<br>Motorcycle parking: 2   |
| Traffic generation (peak hour vehicle movements)<br>Residential: 4 trips<br>Retail: 20 trips   | Traffic generation (peak hour vehicle movements)<br>Residential: 4 trips<br>Retail: 9 trips   |
| <b>Summary of changes</b>  | <b>Retail GFA reduced by 257.8m<sup>2</sup></b><br><b>Parking reduced by 13 spaces</b><br><b>Bicycle parking reduced by 6 spaces</b><br><b>Motorcycle parking reduced by 2 spaces</b><br><b>Traffic generation reduced by 11 retail trips peak hour trips</b> |

### 3.2 Modification of Plans and Documents – Condition 1

The amended plans and accompanying documents submitted with the s4.56 application will amend Condition No. 1 – Approved Plans and Supporting Documentation of the consent. Following is a list of submitted plans and documents that support the application, noting that the proposed changes to the architectural plan set are numbered and listed in red on the accompanying s4.56 plans (NB labelled as s4.55).

### 3.3 Accompanying Plans and Reports

The following plans and reports are submitted as part of the s4.56 application to Council:

- Architectural Plans, prepared by *Artiva Architects*, Job No. 2146, dated 18 July 2023.
- Statement of Environmental Effects, prepared by *JV Urban*, dated August 2023.
- Landscape plans, prepared by *Melissa Wilson Landscape Architects*, dated 24 July 2023.
- Traffic Assessment, prepared by *Stanbury Traffic Planning* dated July, 2023
- Access Report, prepared by *Accessible Building Solutions*, dated 13 June 2023.
- Acoustic Engineers letter – *Noise and Sound Services*, dated 24 February 2023 (re: Condition 63)

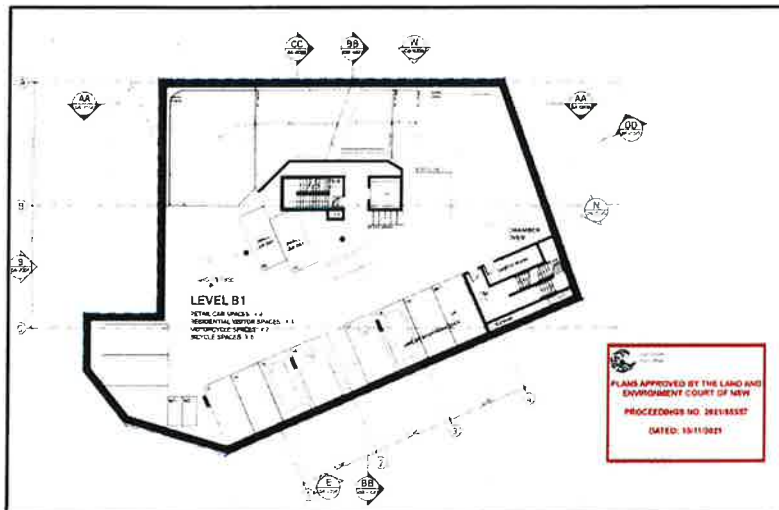
The amended drawings comprise the following:

| Plan No. | Revision No. | Plan Title                | Drawn By                            | Dated        |
|----------|--------------|---------------------------|-------------------------------------|--------------|
| DA-0101  | A            | Basement 1 Plan           | Artiva Architects                   | 18 July 2023 |
| DA-0102  | A            | Ground Floor Plan         |                                     |              |
| DA-0103  | A            | Level 1 Plan              |                                     |              |
| DA-0104  | A            | Level 2 Plan              |                                     |              |
| DA-0106  | A            | Roof Plan                 |                                     |              |
| DA-0200  | A            | North Elevation           |                                     |              |
| DA-0201  | A            | South Elevation           |                                     |              |
| DA-0202  | A            | East Elevation            |                                     |              |
| DA-0203  | A            | West Elevation            |                                     |              |
| DA-0300  | A            | Section AA                |                                     |              |
| DA-0301  | A            | Section BB                |                                     |              |
| LS01     | A            | Cover Page/Notes          | Melissa Wilson Landscape Architects | 24 July 2023 |
| LS02     | A            | GF/ Public Domain Plan    |                                     |              |
| LS03     | A            | GF/ Public Domain Details |                                     |              |
| LS04     | A            | Level 2 Landscape         |                                     |              |

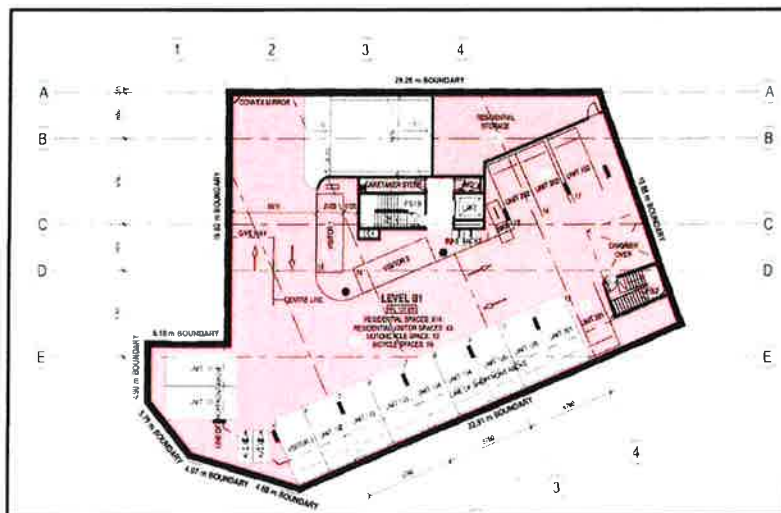
The Architectural Plan modifications comprise the following:

| Proposed Modifications       |  |
|------------------------------|--|
| <b>Basement 2:</b>           |  |
| Whole basement level deleted |  |

| Proposed Modifications |   |
|------------------------|---|
| <b>Basement 1</b>      |   |
| 01                     | Removal of Basement 2 level   |
| 02                     | Residential storage relocated to basement 1   |
| 03                     | Addition of caretaker facilities, including storeroom and WC                          |
| 04                     | Additional parking added to Basement 1 (similar configuration as previous Basement 2) |
| 05                     | Fire stairs (FS2) reconfigured  |



**Figure 2:**  
**Court approved**  
**plan – Basement**  
**1**

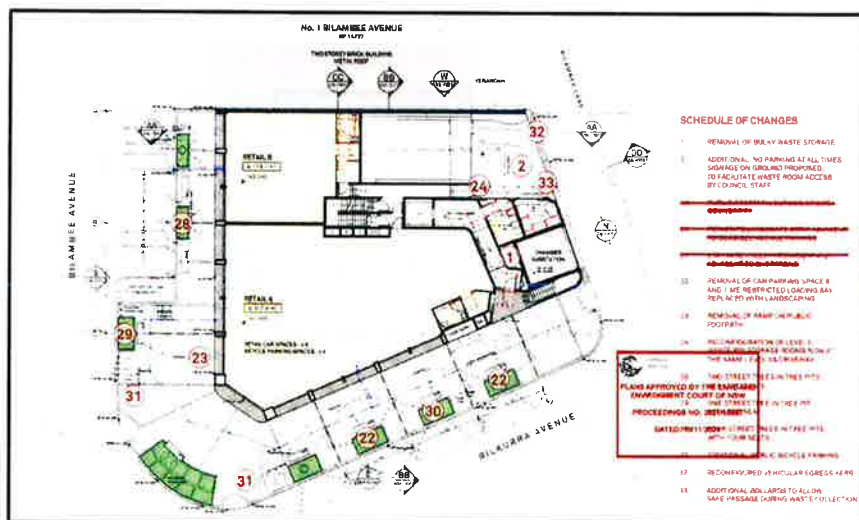


**Figure 3:**  
**Proposed**  
**modification –**  
**Basement 1**

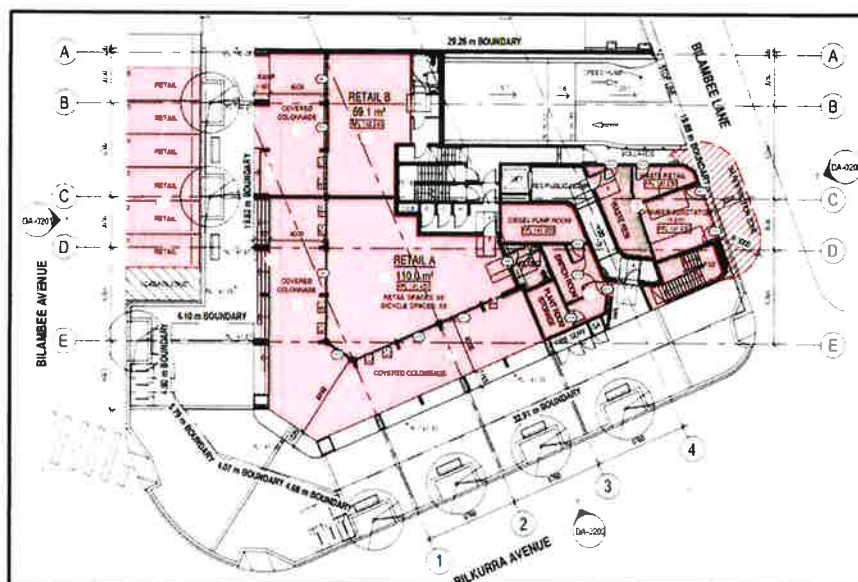
## S4.56 Application - Statement of Environmental Effects

1 Bilambee Lane, BILGOA PLATEAU

| No. | Proposed Modifications  |
|-----|---|
|     | <b>Ground Floor</b>   |
| 01  | Retail area reduced   |
| 02  | External walls pushed back to create covered colonnade space in front of retail areas                           |
| 03  | Steps from pedestrian pathway to colonnade/retail areas   |
| 04  | Six retail on street parking spaces   |
| 05  | Mechanical and electrical service rooms relocated to the ground floor diesel pump room, switch room, plant room |
| 06  | Substation and waste rooms reconfigured to allow for fire stair layout change (FS2)                             |



**Figure 4:**  
Court  
approved plan  
– Ground Floor  
Level



**Figure 5:**  
Proposed  
modification –  
Ground Floor  
Level



## S4.56 Application - Statement of Environmental Effects

1 Bilambee Lane, BILGOA PLATEAU

| No.            | Proposed Modifications   |
|----------------|--|
| <b>Level 1</b> |  |
| 01             | Unit 2 balcony external wall for setback to allow for protection from substation. External wall within substation 3m restriction zone to be solid (no gaps) and FRL 180/180/180 to screen D108 |
| 02             | Unit 2 balcony balustrade within substation 3m restriction zone changed to be solid and FRL 180/180/180  |

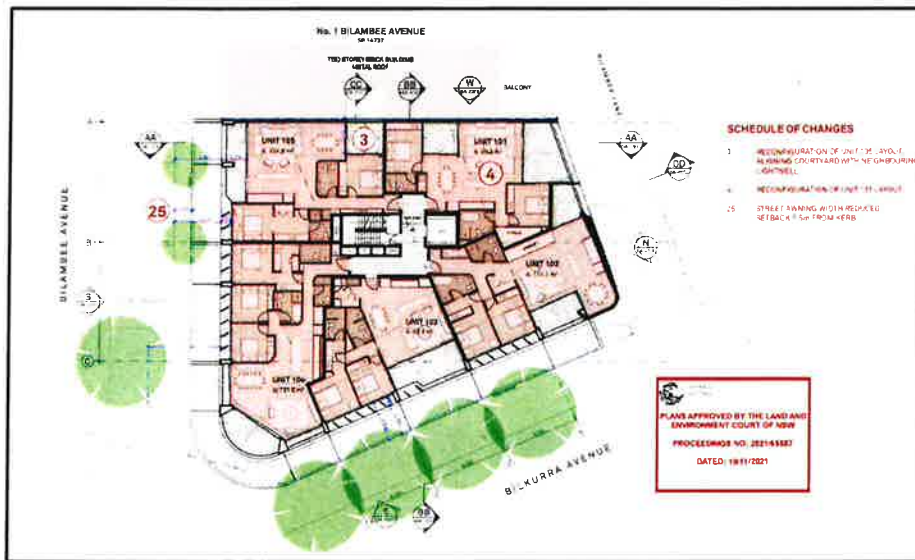


Figure 6:  
Court  
approved  
plan – Level 1

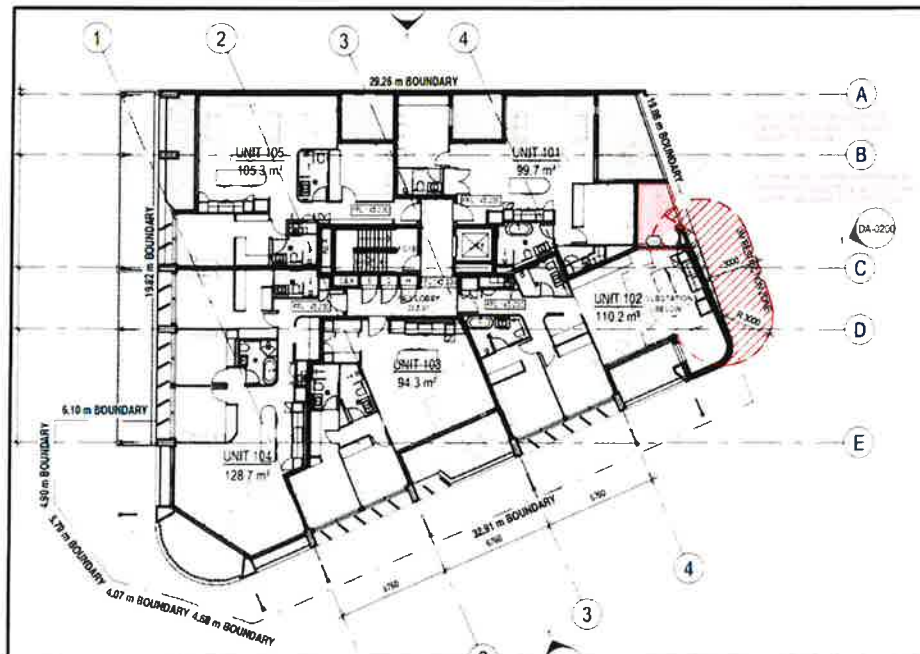
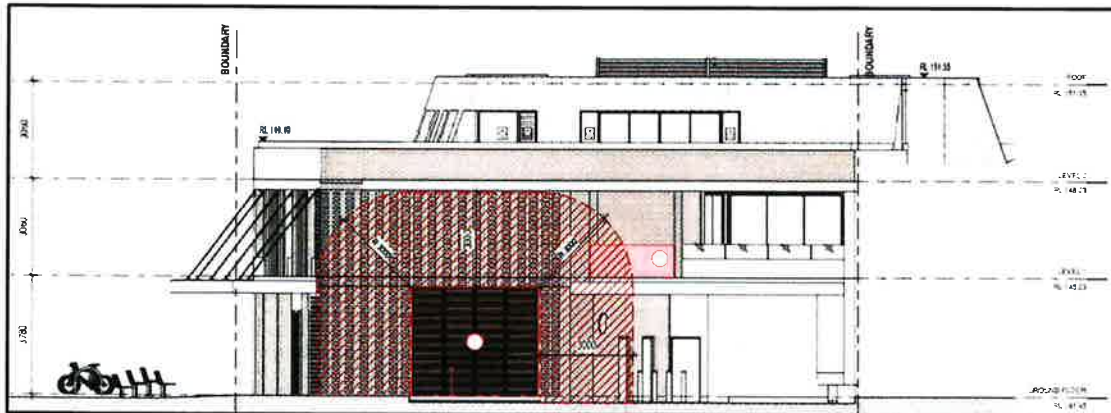


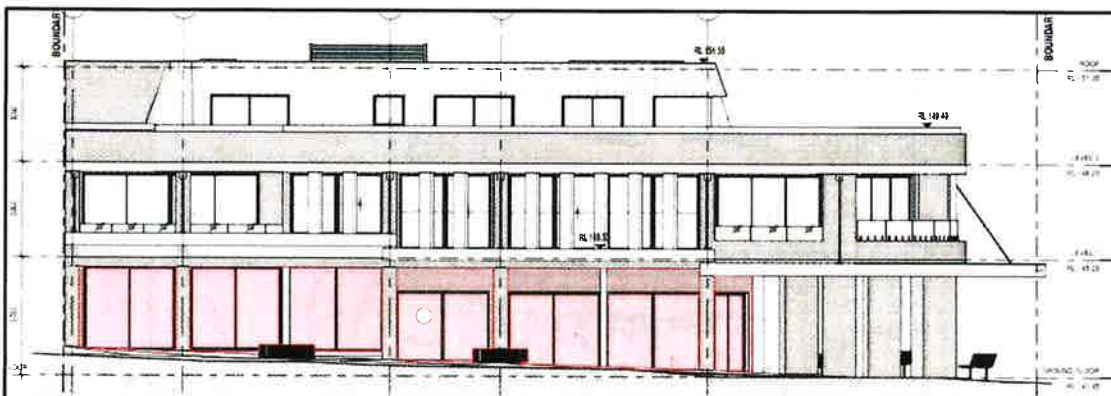
Figure 7:  
Proposed  
modification  
– Level 1

| No. Proposed Modifications – Elevations |   |
|---|---|
|   | <b>North Elevation</b>  |
| 01                                      | Substation moved west to allow for fire stair changes   |
| 02                                      | Unit 2 balcony balustrade within substation 3m restriction zone changed to be solid and FRL 180/180/180 |



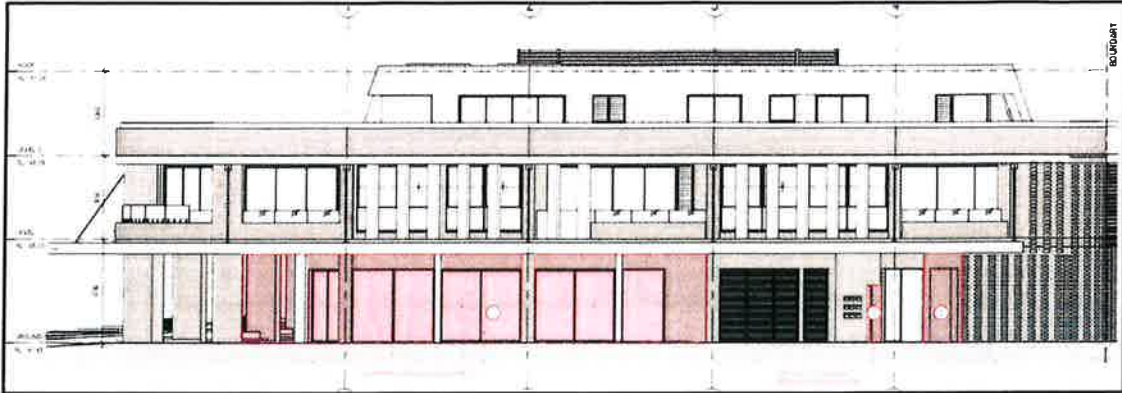
**Figure 8: Proposed North Elevation**

| No. Proposed Modifications – Elevations |   |
|---|---|
|   | <b>South Elevation</b>  |
| 01                                      | External walls pushed back to create covered colonnade space in front of retail areas |



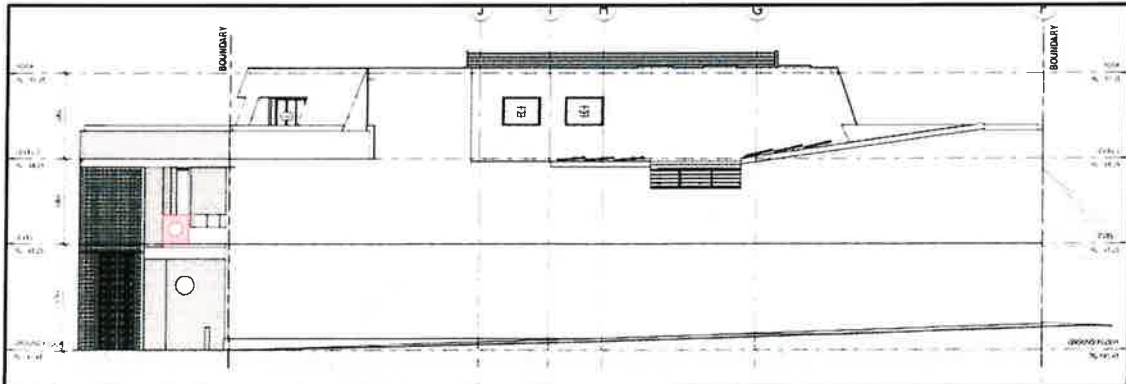
**Figure 9: Proposed South Elevation**

| No. Proposed Modifications – Elevations |   |
|---|---|
| <b>East Elevation</b>                   |   |
| 01                                      | External walls pushed back to create covered colonnade space in front of retail areas |
| 02                                      | New door to mechanical and electrical service rooms relocated to the ground floor     |
| 03                                      | Amended fire stair (FS2) layout and new exit from fire exit                           |



**Figure 10: Proposed East Elevation**

| No. Proposed Modifications – Elevations |   |
|---|---|
| <b>West Elevation</b>                   |   |
| 01                                      | Unit 2 balcony balustrade within substation 3m restriction zone changed to be solid and FRL 180/180/180 |



**Figure 11: Proposed West Elevation**



| No.               | Proposed Modifications – Sections   |
|-------------------|---|
| <b>Section AA</b> |   |
| 01                | Removal of Basement 2   |
| 02                | Residential storage relocated to Basement 1   |
| 03                | Retail area reduced   |
| 04                | External walls pushed back to create a covered colonnade space in front of retail areas                 |
| 05                | Unit 2 balcony balustrade within substation 3m restriction zone changed to be solid and FRL 180/180/180 |



**Figure 12: Proposed Section AA**

| No.               | Proposed Modifications – Sections   |
|-------------------|---|
| <b>Section BB</b> |   |
| 01                | Removal of Basement 2   |
| 02                | Residential storage relocated to Basement 1   |
| 03                | Retail area reduced   |
| 04                | External walls pushed back to create a covered colonnade space in front of retail areas |



**Figure 13: Proposed Section BB**



### **3.4 Modification of Conditions of Consent**

Apart from amending Condition No. 1 – Approved Plans and Documentation, deletion of condition No 17 is sought and modification to the wording of Condition 63 as follows.

No other conditions are proposed to be modified, noting that Council may amend conditions as part of this assessment of this application.

#### **3.3.1 Deletion of Condition No 17**

As the proposal seeks removal of the second basement carpark level, the extent of excavation is significantly reduced such that there is no potential impact on the water table. As a consequence, Condition No 17 is no longer applicable and hence is sought to be deleted.

A report prepared by STS Geotechnic dated 8 August, 2023 is attached providing support and justification for the deletion of the condition.

#### **3.3.2 Condition 63 Mechanical Plant**

Condition 63 states:

##### **63. Mechanical Plant**

At all times, mechanical plant noise emissions must comply with the recommendations in section 5 of the acoustic report "Mechanical Plant Noise Assessment" number "nss23254 – Final" prepared by Noise and Sound Services and dated September 2020. No noise from the mechanical plant shall be audible outside of the boundaries of the site.

All rooftop plant is to remain screened, as shown on the approved plans, so that the plant itself is not visible outside of the site.

**Reason:** To protect residential amenity, comply with Protection of Environment Operations Act 1997 and Noise Policy for Industry 2017. (DACHPBOC5)

Amend the wording of the condition by deleting "No noise from the mechanical plant shall be audible outside of the boundaries of the site". This is based on the following advice from Noise and Sound Services (by letter dated 24<sup>th</sup> February 2023):

*"It is our view that the statement given in Condition 63 - Mechanical Plant of the above-mentioned Judgment/Order i.e. "No noise from the mechanical plant shall be audible outside of the boundaries of the site" is unreasonable and not in line with the NSW Government's Noise Policy for Industry (2017). The Noise Policy for Industry (2017) balances the need for industrial activity with the community's desire to minimise intrusive sounds. It sets assessment noise levels, consistent methods, and best practice measures to manage industrial noise, and is based on the latest scientific research regarding*

*the health effects of noise. In this document the project noise trigger levels are based on background noise level plus 5 dB, not audibility. It states that, for a residence, the project noise trigger level and maximum noise levels are to be assessed at the reasonably most-affected point on or within the residential property boundary, not outside of the boundaries of the site."*

#### **4.0 ASSESSMENT – 'SUBSTANTIALLY THE SAME'**

The application is made pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979), which requires pursuant to s4.56(1)(a) that:

- (1) A consent authority may..... 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)

The application of the phrases '*substantially the same*' have been the subject of much legal debate. In contemplating consent for a modification, the LEC Court (*Moto Project No 2 Pty Ltd v North Sydney Council* [1999] 106 LGERA 298) has held that it is not only the physical or quantitative components of the modified development that are to be considered, it is both the quantitative and qualitative features of the development which determines whether the modified development is acceptable. The quantitative and qualitative changes to the originally approved development are addressed below.

Overall, the nature of S4.55 and s4.56 of the EP&A Act 1979 accepts that there is likely to be some change between an originally proposed (and approved) development and a modified one. The decision of *North Sydney Council – v – Michael Standley & Associates Pty Ltd*, (97 LGERA 433, 12 May 1998, Mason P), added to the understanding of the appropriateness of permitting a modification as follows:

*"Parliament has therefore made it plain that a consent is not set in concrete – it has chosen to facilitate the modifications of consents, conscious that such modifications may involve beneficial cost savings and/or improvements to amenity."*

The word to *modify* means '*to alter without radical transformation*' as confirmed in *Sydney City Council v Ilenace Pty Ltd* (1984) 3 NSWLR 414. In our opinion the changes proposed result in a development that is substantially the same. The changes are not deemed to be *radical* as the overall footprint and envelope

remains predominantly unchanged and the changes to the ground floor retail outlets occur within that approved footprint and building envelope. Other changes are consequential, generally minor or at basement/below ground level. The changes need to be considered holistically within the overall scope of the original consent not by comparison of individual elements.

Further, there is no change to the proposed land use which is maintained as a shop top housing development comprising two retail premises with seven residential units above and basement parking. The modified proposal is therefore *substantially the same* from a landuse perspective.

The main consideration under Section 4.56 is what constitutes "*the same development*" and what are the parameters defining "*substantially*". In the case of *Vacik Pty Limited and Penrith Council (unreported 24 February 1992, Stein J)*, the Court held that substantially means "essentially or materially or having the same essence" and that the substance of determining these matters rests with a comparative analysis between the consent being varied and the modification and this approach is supported by the decision of Bignold J in *Moto Projects (No 2) Pty Ltd and North Sydney Council (NSWLEC 280, Appeal 10742 of 1997, 17/12/99)*. This is reiterated in the more recent case of *Arrage v Inner West Council [2019] NSWLEC 85* and again in *Trinvass Pty Ltd v City of Sydney Council [2018] NSWLEC 1691* involving changes to the basement level and façade changes of a mixed use development, where Commissioner Walsh C found that the changes were modest in scope and did not alter the substance of the proposal when considered in both quantitative and qualitative terms (*Moto Project No 2 Pty Ltd v North Sydney Council [1999] 106 LGERA 298*). This same approach to the assessment of substantially the same development was applied in *Progress East Pty Ltd v Randwick City Council [2019] NSWLEC 1029*.

When considering material impact, it is our opinion that the proposed modifications are not of such significance to warrant a new application. By way of assistance, the Macquarie Concise Dictionary defines material to mean, amongst other things: *of such significance to be likely to influence the determination of a cause*. Other common meanings of material in relation to impacts would include *real, not incidental or slight*.

In respect to the subject s4.56 application it is our opinion the proposed modifications may be considered under the provisions of s4.56 as the development remains substantially the same development, as follows:

- The composition of the shop top housing development is the same – two retail premises and 7 residential units;
- The footprint and building envelope of the new building is substantially unaltered from the original approval;
- The public domain works, including provision of on-street parking remains the same;
- The access to and from the basement level remains the same;
- The interrelationship of the building within the context of the adjoining development is unchanged;
- The changes to the onsite parking requirements due to the reduced retail floor area are consequential and below ground level. the removal of Basement 2 has little impact on the remainder of the development.
- Minor changes to the materiality do not alter the external presentation of the new building within the locational context of the site.

Physical changes to the development also include qualitative changes that do not add or subtract to the numerical analysis. The majority of these are due to detailed design work for the construction phase, seeking to respond to conditions of consent, improve the functionality and efficacy of the development or consequential to internal changes to ground floor level and removal of Basement 2. They are detailed on the s4.56 plan set.

Overall, it is our opinion that the proposed modification satisfies the s4.56 principles adopted by the LEC Court for assessment of the modifications to the site as:

- The proposal does not contravene the objectives of the zone, particularly being consistent with the existing and likely future environment of the immediate neighbourhood;
- The proposal does not increase the density of development in the area – maintained as a shop top housing development comprising 2 retail premises and 7 residential units with associated parking;
- The external appearance of the site is not notably altered by the modifications;
- The scale, bulk and appearance of the building is generally unchanged by the modifications;
- There are a number of changes proposed, but each modification, individually or cumulatively, does not seek to change the use of the site, as approved in DA2020/1351;



- The bulk, scale and overall visual appearance of the modified building is not altered to such a degree that would be considered significant or raise significant environmental harm to the adjoining or nearby properties;
- The visual bulk of the building envelope is unchanged to that originally approved;
- Levels 2 and 3 are unchanged;
- There are no additional demands on existing, planned or local utility services and infrastructure in the area;
- There are no material impacts on amenity of neighbours in respect of privacy, overshadowing, view loss, or visual impacts.
- There is no change in the materiality, aesthetics, built form of the building from the public domain areas around the building;

Accordingly, the Court can comfortably proceed to a merit assessment pursuant to s.4.15(1), so as to satisfy s4.56(1A) of the Act given the amended development results in a development that is substantially the same as the original approval and as such the proposed changes subject of this application are substantially the same pursuant to s4.56(1a) of the *EP&A Act 1979*.

#### **5.0 ASSESSMENT – SECTION 4.15 OF THE EP&A ACT 1979**

In accordance with s.4.15(1) of the *EP&A Act, 1979* Council, in determining a development application must take into consideration provisions of any EPI's. The following assessment relates to the proposed amendments and is not a reassessment of the whole development.

#### **5.1 State Environmental Planning Policy BASIX**

Relevant provisions require that all works over \$50,000.00 must be certified as achieving BASIX. The original application is supported by a BASIX Certificate demonstrating that the residential component of the development achieves the relevant energy efficiency requirements. As there are no changes to Levels 2 & 3 (residential units) proposed, a new or updated BASIX Certificate is not required.

## 5.2 Pittwater Local Environmental Plan 2014 (PLEP 2014)

At the time of assessment of the original development application the subject site was zoned B1 – Neighbourhood Centre. This zone has been superseded by the E1- Local Centre zone, as of 16 December 2022.<sup>1</sup> Shop Top Housing remains permissible with Council’s consent in the E1 zone of PLEP 2014. The various changes, as outlined in this Statement, are ancillary and incidental to the approved shop top housing development and therefore permissible with consent.

| PLEP 2014  | S4.56 Modification  |
|--|---|
| <b>Cl. 4.3 Building Height</b>   | As approved. RL151.55.  |
| <b>Cl. 4.4 Floor Space Ratio</b>   | FSR not adopted by PLEP 2014.   |
| <b>Cl. 4.5A Density Controls for certain residential accommodation<sup>2</sup></b><br><br><i>Shop top Housing: E1 Local Centre -<br/>Max 1 dwelling per 150m<sup>2</sup> site area</i><br><br><i>(1) The objectives of this clause are as follows—</i><br><i>(a) to achieve planned residential density in certain zones,</i><br><i>(b) to ensure building density is consistent with the desired character of the locality.</i> | <p>The development has been approved with 7 dwellings and there is no change to the approval in respect of the number or density of dwellings approved for the site. A clause 4.6 variatio to the standard was upheld by the Court as part of the previous application. No change is proposed</p> |
| <b>Cl. 7.2 Earthworks</b>  | <p>The depth of excavation approved for the original development is reduced due to the removal of Basement 2 level.</p> <p>Due to the groundwater levels at the site, the basement will still be required to be tanked – as per Condition 17 of the consent.</p>                                  |

<sup>1</sup> Published LW 16 December 2022 (2022 No 830)

<sup>2</sup> cl 4.5A: Am 2022 (830), Sch 1.20[9].

**5.3 Relevant Non-Statutory Development – Pittwater 21 DCP (P21DCP)**

The Pittwater 21 DCP applies to this site, with the majority of the controls applying to the construction of new development. The DCP does not have controls applying specifically to shop top housing or mixed-use developments. Therefore, only those matters relevant to the proposed modifications are addressed. In this regard those provisions relating to built-form, size, scale, height, external appearance, the context of the site and its urban setting result in substantially the same development as that originally approved.

| Relevant DCP provisions  | Proposal  |
|--|---|
| <b>SECTION B GENERAL CONTROLS</b>  |   |
| <b>B2 Density Controls</b>   |   |
| <b>B2.6 Dwelling Density and Subdivision – Shop Top Housing</b><br><i>Applies to the B1, B2 and B4 zones</i><br><br>The commercial/retail component of the development must be a <u>minimum</u> of 25% of the gross floor area of the building.<br><br>Note: Where variation is sought to the minimum requirement for commercial floor space, the applicant is required to justify that the commercial viability of the centre will not be affected in the short or long term and that residents can continue to be provided with a full range of services and facilities. | The retail/commercial component of the development equates to 37% of the overall GFA of building (1059m <sup>2</sup> ) and therefore complies |
| <b>B6 Access and Parking</b>   |   |
| <b>B6.1 Access driveways and works on the Public Road Reserve</b><br><b>B6.2 Internal Driveways</b>  | As approved.  |
| <b>B6.3 Off-Street Vehicle Parking Requirements</b>  | As per below:   |
| Approved parking: two basements containing 30 parking spaces with 12 bicycle and 4 motorcycle parking + 7 indented parking spaces within Bilambee Lane.  | Proposed parking: one basement containing 17 spaces with ancillary bicycle and motorcycle parking. Bilambee Lane spaces remain unchanged.     |
| Parking allocation:<br>Residential: 16<br>Residential visitor: 3   | Parking allocation:<br>Residential: 14<br>Residential visitor: 3  |

|  |   |
|--|---|
| Retail: 6 on-street + 11 on-site<br>Loading bay: 1<br>Total: 37 spaces                       | Retail: 6 on-street<br>Loading bay: 1<br>Total: 24 spaces   |
| Bicycle parking: 12 on-site + 12 within public domain<br>Motorcycle parking: 4               | Bicycle parking: 6 on-site + 12 within public domain<br>Motorcycle parking: 2   |
| Traffic generation (peak hour vehicle movements)<br>Residential: 4 trips<br>Retail: 20 trips | Traffic generation (peak hour vehicle movements)<br>Residential: 4 trips<br>Retail: 9 trips   |
| <b>B6.7 Transport and Traffic Management</b>   | Traffic generation is reduced as detailed above. Retail parking is provided in the public domain parking spaces approved. No requirements as a result of the modifications.   |
| <b>B8 Site Works Management</b>  |   |
| <b>B8.1 Construction and Demolition - Excavation and Landfill</b>                            | The amount of excavation required is reduced due to the removal of Basement 2. The conditions of consent regarding geotechnical requirements for the development, eg Condition 17 – tanking of the basement level - remain valid.   |
| <b>B8.2 Construction and Demolition - Erosion and Sediment Management</b>                    | As approved. Conditions of consent remain valid.  |
| <b>B8.3 Construction and Demolition - Waste Minimisation</b>                                 | The only change for waste management for the site is the reduced amount of excavation during the site works phase of the development and some reduction in construction waste without Basement 2. However, the methods of collection and disposal are not altered and conditions of consent remain valid. |
| <b>B8.5 Construction and Demolition - Works in the Public Domain</b>                         | As approved. No change. Parking in the public domain is retained and the building footprint is the same as that approved.   |



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| <b>B8.6 Construction and Demolition - Traffic Management Plan</b> | As approved.   |
| <b>SECTION C DEVELOPMENT TYPE CONTROLS</b>                        |  |
| <b>C1 Design Criteria for Residential Development</b>             |  |
| <b>C1.1 Landscaping</b>   | The Landscape Plans for the development are revised and updated as part of this s4.56 application in order to reflect the building as modified and ensure consistency within the site and surrounds, particularly given its interrelationship with the public domain in this case. |
| <b>C1.4 Solar Access</b>  | As approved. No change to the overall building envelope. Therefore, no change to solar access.   |
| <b>C1.5 Visual Privacy</b>  | No change to the approved development.   |
| <b>C1.6 Acoustic Privacy</b>                                      | No change to the approved development.<br><br>Minor change to Condition 63 – Mechanical Plant proposed to amend wording to reflect industry standards.   |
| <b>C1.7 Private Open Space</b>                                    | No change to the approved development.   |
| <b>C1.9 Adaptable Housing and Accessibility</b>                   | Access Report submitted with the s4.56 package.  |
| <b>C1.10 Building Facades</b>                                     | Modification to facades of the building at ground floor level due to the change to the retail premises. These are detailed and shown in the s4.56 plan set.<br><br>Each façade of the building remains satisfactory in terms on the DCP provisions.                                |
| <b>C1.12 Waste and Recycling Facilities</b>                       | Minor change to ground floor rear waste rooms to allow for fire stair layout change. Compliant.  |

| <b>C2 Design Criteria for Business Development</b>                |  |
|---|--|
| <b>C2.1 Landscaping</b>   | Refer to revised landscape plan set submitted with the s4.56 package.  |
| <b>C2.3 Awnings</b>   | The external walls at ground level are pushed back to create a covered colonnade in front of the retail areas.   |
| <b>C2.5 View Sharing</b>  | No change to the view sharing as the roof height, building envelope and general footprint of the building is the same.   |
| <b>C2.6 Adaptable Housing and Accessibility</b>                   | Access Report submitted with the s4.56 package.  |
| <b>C2.20 Public Road Reserve - Landscaping and Infrastructure</b> | Refer to the Landscape Plan set. Generally complies within the design solution for this development site.  |
| <b>C2.22 Plant, Equipment Boxes and Lift Over-Run</b>             | Mechanical plant to comply with industry standards in terms of acoustic impacts.<br>Modification of wording of Condition 63 proposed to reflect industry standards.    |
| <b>SECTION D LOCALITY SPECIFIC DEVELOPMENT CONTROLS</b>           |  |
| <b>D3 Bilgola Locality</b>  |  |
| <b>D3.1 Character as viewed from a public place</b>               | No change. Remains satisfactory – as determined by the NSW Land & Environment Court approval.  |
| <b>D3.3 Building colours and materials</b>                        | As approved.   |
| <b>D3.6 Front building line</b>                                   | As approved.   |
| <b>D3.7 Side and rear building line</b>                           | As approved.   |
| <b>D3.9 Building envelope</b>                                     | Generally as approved. No substantial changes to the height, bulk, scale or external appearance of the development within the site, its setting or locational context. |

**5.4 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality. Suitability of the site for the development.**

This s4.56 application seeks to reduce the ground floor retail floor area with consequential changes to parking and related elements of the development. The changes have been driven by the proposed subsequent exhaustive market inquiries as to viability of the extensive areas of commercial spaces and relatedly the financial viability of the development as a whole as a result of the need for a second basement level of parking to accommodate the DCP parking demand for the retail component.

The building footprint and building envelope is not substantially changed by the modifications proposed by this application. The overall height, scale, bulk, external appearance and function of this development within the Bilgola neighborhood is not altered by the changes proposed.

The development remains two retail outlets, albeit smaller floor areas, with seven residential units above (no change), all built over basement level parking and servicing, albeit with no second basement level. Other small modifications to the building are consequential or compliance matters for the future operation of the site. While there are a number of modifications proposed, they result in substantially the same development as that originally approved and have minimal environmental impacts, as demonstrated throughout this Statement.

The amended development will not result in any undue or indeed material impact on the natural and built environments or any unreasonable social and economic impacts in the locality. The proposed development, as amended, remains suitable for the site.

The impacts on the natural and built environments are of a level considered acceptable for mixed commercial/residential development of the scale and nature proposed. In this instance, the impact level is not to the extent that would warrant refusal or modification of the proposal as the status quo is maintained particularly in terms of amenity on neighbours, but arguably reduced as a result of the reduced traffic generation from the smaller retail area and parking area.

The proposal maintains the character and sense of place characteristics of the Bilgola neighborhood area. The site has been determined by the NSW Land & Environment Court to be suitable to the approved development, which is permissible and satisfies the broad objectives of PLEP 2014 and Pittwater 21 DCP.

#### **5.5 The public interest**

Given that the relevant issues have been addressed with regard to the public interest as reflected in the relevant planning policies and codes, the development is unlikely to result in any adverse impact to the public interest in the circumstance of the case.

#### **6.0 CONCLUSION**

The proposed modification results in a development which is substantially the same as the original approval to DA2020/1351 granted by the NSW Land & Environment Court.

The existing conditions of consent for the development will continue to ensure that an adequate level of environmental performance is achieved. Conditions relevant to the amended plans and documentation are proposed to be amended to allow for the modifications.

The amended proposal has been reviewed under the provisions of the Pittwater LEP 2014 and Pittwater 21 DCP. The proposed development, as amended will continue to satisfy the zone and development standards of the Pittwater LEP 2014 for this site.

Accordingly, the subject Section 4.56 application as described in this Statement will result in negligible or no additional environmental impact and is substantially the same development as originally approved and worthy of approval.

Joe Vescio  
August 2023