

19 May 2022
Our Ref: 20768C.3DK_S4.55(1A)



Northern Beaches Council
PO Box 82
MANLY NSW 1655

planning consultants

Dear Sir,

**RE: SECTION 4.55(1A) APPLICATION TO MODIFY
DEVELOPMENT CONSENT No. DA2020/0579 (AS MODIFIED)
25-27 WARRIEWOOD ROAD, WARRIEWOOD**

1.0 Introduction

DFP has been commissioned by J & G Knowles & Associates to prepare an application under section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify development consent No. DA 2020/0579 (as modified on 21 April 2022) for the construction of a residential flat building, semi-detached dwellings, dwelling house and community title subdivision and including internal private road.

The section 4.55(1A) application seeks to modify the approved development as follows:

- Amend the landscape treatment to the western front setback to Lorikeet Grove
- Reinstated the ramp from Lorikeet Grove to the apartment building.
- Re-instate the external steps to the ground floor dwellings of the southern apartment building.
- Amend the retaining wall arrangement along the southern setback to Lorikeet Grove.

Section 3.0 of this submission describes the proposed design modifications in more detail.

This planning report has been prepared by DFP based on the information listed below. The documentation listed below are those documents submitted with the modification application and have been uploaded to the NSW Planning Portal:

1. Amended Architectural Plans prepared by VIA Architects.
2. Amended Landscape Plan prepared by CDA Design Group.
3. Amended Civil Plans prepared by SGC Engineering.

This letter has been prepared in support of the section 4.55(1A) application and includes the information necessary for Council to assess and determine the application.

We have concluded that the proposed modifications will result in a development that is substantially the same as the approved development and will have minimal environmental impact and accordingly, the proposal is considered to satisfy the requirements to enable these modifications to be approved by Council pursuant to s4.55(1A) of the EP&A Act.

2.0 Background

On 16 November 2020 the Sydney North Planning Panel (Panel) granted a deferred commencement consent to Development Application No. DA2020/0579 for the construction of a residential flat building, semi-detached dwellings, dwelling house and community title subdivision and including internal private road at 25-27 Warriewood Road, Warriewood.

Council confirmed by letter dated 11 February 2021 that the consent is operative and that the consent will operate from 11 February 2021.

On 20 May 2021 Council approved a modification to amend conditions in relation to the subdivision works certificate, tanking of the basement, minor amendments to the building and landscaping.

On 21 April 2022 a further application under Section 4.55(1A) was approved to modify the landscape treatment to the Warriewood Road frontage including the provision of platform lifts to two of the adaptable dwellings and to amend the landscape areas of the Sydney Water easement.

3.0 Proposed Modification

The proposed modifications have arisen during the process of design development. The proposed modifications are, in part, to revert to the landscape treatment of the western setback to Lorikeet Grove to that of the original approval and to better integrate the landscape treatment and design as it returns around the southern setback of Lorikeet Grove. The approval history for the ramp treatment from Lorikeet Grove is described as follows:

1. The original DA approved a ramp and steps to three (3) apartments. The Modification applications proposes to revert to that arrangement.
2. The first Modification application removed the ramp and introduced steps to the main pedestrian entrance to the two apartment buildings. The path to the dwellings was therefore at a higher level and provided level access to each balcony/terrace. The higher path level required a higher ground level and a batter between the access path and the front boundary.
3. The proposed modification reinstates the original arrangement of the entry ramp and steps to each balcony and removes the batter that would otherwise be required for the approved Modification. The ground levels are therefore lowered to create a more natural landscape setting compared to the 'artificial' look of a batter.

The plan modifications are labelled (A to F) on **Figure 1** and include:

- A. Reinstating the ramp from Lorikeet Grove to the southern apartment building.
- B. Reinstating the external steps to the ground floor dwellings of the southern apartment building and include a set of steps to Apartment G.01 that was inadvertently omitted from the plans in the original application
- C. Amending the landscape treatment of the western front setback to Lorikeet Grove to suit the amended finished ground levels associated with pedestrian ramp/path and steps.
- D. Amend the retaining wall arrangement along the southern setback to Lorikeet Grove (DA-200) to better integrate with the amended landscape treatment in the western setback and step the boundary planter wall to respond to the slope of the land/road. The approved plan DA-200 did not show the retaining wall and this has now been added. The wall height is a maximum of 1000mm.

- E. To correct an error on the landscape plans which indicated a planter with 1000mm soil depth on Council's verge either side of the basement driveway.
- F. To correct the plans to show the proposed fill and footpath levels in front of the northern apartment building.

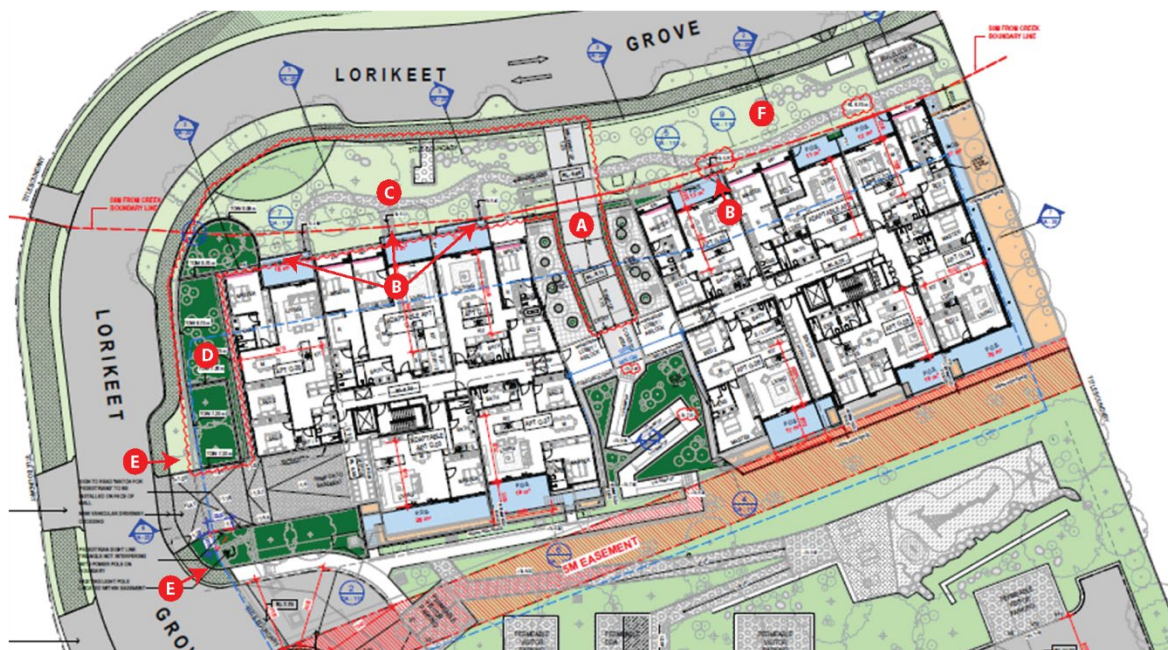


Figure 1 Location of the proposed landscape amendments

3.1 Modification to the Consent

In light of the above modifications the consent is proposed to be modified as follows:

- Condition 3A is to be updated to reflect the amended architectural, landscape plans and civil plans submitted with this application.

Note that the civil plans prepared by SGC have been updated for co-ordination purposes only (e.g. to show the steps). There are no changes to the stormwater design.

4.0 Statutory Provisions

Section 4.55 of the EP&A Act contains the provisions that must be considered by Council in determining an application to modify a Notice of Determination. In this regard, the relevant section is s4.55(1A) of the EP&A Act.

This application is lodged under s4.55(1A) as the proposed modifications are considered to be minor in nature and will have only minimal environmental impact (see **Section 5.0**).

In addition to the EP&A Act, Clause 115 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation) contains the information that must be submitted with an application to modify a consent. The requirements under the EP&A Act and EP&A Regulation are detailed below.

4.1 Section 4.55(1A) of the Act

Section 4.55(1A) of the Act applies to modifications where a minimal environmental impact may occur. Specifically, section 4.55(1A) provides that a number of matters be addressed, as discussed below:

“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”***

The area of landscaping in the southern and western setbacks remains the same as that approved. The structure of the landscaping and plant species also remains the same as the approved design. The landscape setting of the development is therefore maintained.

The deep soil and impermeable areas of the approved development is unchanged as a consequence of the proposed modification.

The overall landscaped area, deep soil area and impermeable areas are therefore retained. Importantly, the requirement for 41% landscaped area (which stems from an earlier consent – DA N0611/16 for the residential care facility) is still achieved and therefore the water quality targets of the approved development are maintained.

For these reasons the amendments are considered to be of minimal environmental impact.

- “(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)”***

The original development approved a ramp in the western setback and steps leading up to the three ground floor apartments in the southern apartment building. The proposed modification reinstates that design approach and for that reason the development is substantially the same development as the development for which the consent was originally granted.

The modification to the treatment of the landscaped setback on the southern side of the south apartment building is to amend the location of retaining walls to better relate to the building and its interface with the property boundary. The modifications improve the appearance of retaining walls to step with the fall of the land. This modification does not change the intent of the original approval and the modified development will remain substantially the same development as the development for which the consent was originally granted.

- “(c) It has notified the application in accordance with:***
(i) The regulations, if the regulations so require, or
(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 modifications of a development consent,”

Section A5.1 of Pittwater 21 Development Control Plan (DCP) provides Council staff with the discretion to not notify an application which is of a minor nature and impact. The application meets the requirements of this control of the DCP and Council may therefore decide not to notify the modification application.

Should Council form a different opinion, then the modification application will need to be notified in accordance with Section A5.1 of Pittwater 21 DCP.

“(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”

Should Council notify the subject application in accordance with section 4.55(1A)(c), it must consider any submissions made during a notification period.

Subsections (1) and (2) of section 4.55 do not apply to the proposed modification. Subsection (3) is addressed in **Section 5.0** of this submission.

4.2 Clause 100 of the EP&A Regulation 2021

Pursuant to section 100(1) of the Regulation the information required to be submitted with an application to modify a development consent under s4.55 are contained in this letter and provided as part of the application via the NSW Planning Portal.

BASIX Certificates

Section 100(3) requires if the modification application under Section 4.55(1A) or (2) relates to BASIX development or BASIX optional development and was accompanied by a BASIX certificate/s, then the modification application must also be accompanied by the appropriate BASIX certificate/s or a new BASIX certificate if the current BASIX certificate is no longer consistent with the development.

The BASIX certificates require a central water tank (rainwater or stormwater) to be connected to the irrigation of the common landscaped areas. The amended landscaped design does not impact on the ability for this BASIX obligations to be implemented and the modification application is consistent with the BASIX certificate.

The current BASIX certificate is therefore resubmitted with the application as required by section 100(3) of the Regulation.

Design Verification

Section 102 of the Regulation requires that if an application for the modification under section 4.55(2) or section 4.56(1) of the EP&A Act relates to residential apartment development and if the development application was required to be accompanied by a design verification from a qualified designer under section 29 of the Regulations, then the application must be accompanied by a statement by a qualified designer. The application is lodged under section 4.55(1A) and a design verification statement is not required by the EP&A Regulation.

5.0 Environmental Planning Assessment

Section 4.55(3) of the EP&A Act requires that such of the matters referred to in section 4.15(1) as are of relevance to the proposed modification must be taken into consideration in determining the application for modification.

In addition, 4.55(3) requires the consent authority to take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

Accordingly, the following subsections provide an assessment of any such relevant matters.

5.1 Section 4.15(1)(a) – Planning Controls

5.1.1 Pittwater Local Environmental Plan 2014

The site is located in the R3 Medium density residential zone. The approved development remains permissible with consent in the R3 zone. The proposed modifications do not change the consistency of the approved development against the zone objectives of the R3 zone.

There are no provisions of the LEP that are directly relevant to the proposed modifications.

5.1.2 State Environmental Planning Policies (SEPPs)

The following SEPPs were addressed as part of the assessment of the original DA.

- SEPP (Infrastructure) 2007. The provisions of this SEPP have been transferred to SEPP (Transport and Infrastructure) 2021. There are no provisions of the SEPP directly relevant to the proposed modifications.
- SEPP (Building Sustainability Index: BASIX) 2004 has been addressed above and the amendments do not affect the dwellings and therefore the BASIX affected buildings.
- SEPP (Coastal Management) 2018. The provisions of this SEPP have been transferred to SEPP (Resilience and Hazards) 2021. There are no provisions of the SEPP directly relevant to the proposed modifications.
- SEPP No. 65. Design Quality of Residential Flat Development.
 - There are no amendments to the dwellings of the residential flat building.
 - The area and dimensions of the balconies of G.09, G.10 and G.11 are unchanged. These ground floor dwelling retain their direct pedestrian access to Lorikeet Grove to provide activation to the street. The functionality of the balconies and the Apartment Design Guide objectives are still achieved.

5.1.3 Pittwater 21 Development Control Plan

The following discussion provides assessment or commentary (as applicable) against the relevant provisions of the DCP.

Section A – Shaping Development in Pittwater

The notification provisions of the DCP have been discussed in **Section 4.1** of this planning report. The built form of the development remains substantially unchanged from that originally approved and the built form controls are therefore not re-assessed.

Section B – General Controls

The controls relating to heritage, density, hazards, the natural environment, vehicular access and parking and site works management are all unaffected by the proposed modifications.

Section C – Development Type Controls

The approved development was assessed against Section C1 - Design Criteria for Residential Development.

The approved built form of the development is not proposed to be modified. These controls are therefore not applicable to the modification.

The approved development was also assessed under Section C6 – Design Criteria for the Warriewood Valley Release Area. Relevant provisions are discussed below.

- Section C6.7 – Landscaped Area (Sector, Buffer Area or Development Site). The assessment report for DA N0611/16 noted that Lot 2 (being the lot on which the subject development is located) is to be provided with a restriction on title requiring a minimum 41% of the site area to be provided as landscaped area. The proposed amendments to the landscape design do not reduce the total landscaped area and the 41% requirement is still achieved.

Section D – Locality Specific Development Controls

Section D16 – Warriewood Valley Locality applies to the site. The following provisions are of most relevance to the proposed modification:

- Section D16.10 – Private and Communal Open Space. The dimensions and area of the balconies of Apartments G.09, G.10 and G.11 are unaffected by the proposed modification.

5.2 Section 4.15(1)(b) – Natural and Built Environmental Impacts

5.2.1 Landscape Outcome

The area of landscaping in the southern and western setbacks remains the same as that approved. The structure of the landscaping and plant species also remains the same as the approved design. The landscape setting of the development is therefore maintained.

The retaining wall height was unfortunately not shown on the original plan. DA-200 now illustrates the retaining wall on the southern boundary which steps with the land.

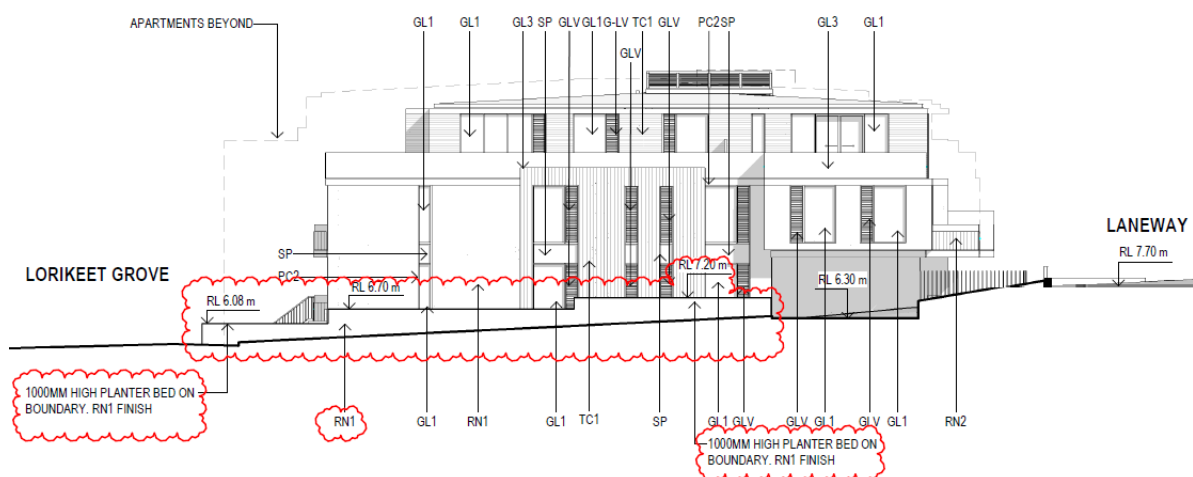


Figure 2 Extract from southern elevation (DA-200)

Figure 3, on the following page, compares the landscape treatment between the approved landscape plan (as per the approved modification dated 21 April 2022) and the proposed amendment to the landscape treatment. As detailed in the comparison below, the landscape treatment of the southern setback (above the basement slab) is similar to that which has been approved but there is an improved outcome by stepping the retaining wall whilst not compromising the soil depth and landscape outcome.

Approved Landscape Plan



The approved landscape plan shows a consistent retaining wall along the southern boundary and did not step with the slope of the land.

The retaining wall provided for a minimum 1000mm soil depth above the basement slab below.

The landscape treatment included two trees with an understorey garden bed.

Proposed Amendment to Landscape Plan



The proposed amendment steps the retaining wall (refer to **Figure 2**) with a maximum external wall height of 1m. This will present a low scale wall to Lorikeet Grove.

The soil depth of 1000mm is still achieved.

The proposal provides for two trees at one end of the and a garden bed that could include shrubs, tufted plants and ground covers.

An additional street tree has also been nominated near the driveway.

Figure 3 Comparison of approved and proposed landscape treatment

Figure 4 is a rendered image prepared by VIA Architects to illustrate the vision for the landscape treatment for the southwestern corner of the site. The effect of the terraced retaining wall is apparent in this rendered image.



Figure 4 Graphic representation of the landscape treatment along Lorikeet Grove (source VIA Architects)

5.3 Section 4.15(1)(b) – Social and Economic Impacts

There are not considered to be any relevant or adverse social or economic impacts arising as a consequence of the staged construction.

The provision of accessible entries to the adaptable dwellings is considered to be a positive social outcome.

5.4 Section 4.15(1)(c) – Suitability of the Site for Development

The modified landscape treatment does not change the relationship of the development to the site or its surrounds. The proposed modifications do not alter the suitability of the site for the development.

5.5 Section 4.15(1)(e) – Public Interest

The proposed modifications will still enable the development to achieve the objectives of the R3 zone which reflect the public interest. There are no other public interest matters that are considered to arise as a consequence of the proposed modification.

5.6 Reasons for the Grant of the Consent

In determining DA the Sydney North Planning Panel provided the following reasons why consent was granted:

“The Panel determined to approve the application for the reasons outlined below and in the Council assessment report.

The site is zoned R3 Medium Density Residential under the provisions of Pittwater Local Environmental Plan 2014 (PLEP 2014), and the proposed development is permissible with consent. The Panel concurs with Council’s assessment that the proposed mixed use residential development is well resolved, with well-articulated built form, generous landscaped areas and a variety of materials and textures that will blend with the proposed landscape solution.

The proposal would provide good amenity for future occupants of the proposed dwellings commensurate with that its surrounding properties and the proposal is considered to be an appropriate contextual fit for the site, within the Warriewood Valley Release Area.

Whilst the proposed residential flat buildings do not meet the minimum solar access requirements of the ADG and P21 DCP, the development is sited and designed to provide adequate sunlight, daylight and ventilation to habitable rooms during midwinter. As such the proposal is consistent with the outcomes of the solar access development control and the proposal is acceptable despite technical noncompliance in this regard.

Given Council's merit assessment of the development the Panel concurs the proposal is consistent with the objectives of the DCP, zone objectives and aims of the LEP, the objectives of the relevant EPIs and with the objectives of the Environmental Planning And Assessment Act 1979 and approval of the proposal would be in the public interest."

The proposed modifications do not alter the built form or the design outcome of the landscaped areas. The amenity for the occupants is retained and unchanged from the approved development. The modified development is considered to maintain consistency with the objectives of the Pittwater 21 DCP and the zone objectives and aims of the LEP in the same manner as the approved development. Accordingly, the proposed modifications do not offend any of the reasons for the original granting of consent.

6.0 Conclusion and Recommendations

This submission accompanies an application under section 4.55(1A) of the EP&A Act to modify DA2020/0579 (as modified). The proposal involves minor modifications to the landscape treatment of the southern and western setbacks adjacent to the southern apartment building along Lorikeet Grove.

The modifications will result in a modified development that is substantially the same as the development as originally approved and the proposed modifications will have minimal environmental impact. Accordingly, the proposal is considered to satisfy the requirements pursuant to s4.55(1A) of the EP&A Act.

Accordingly, we are of the view that the proposed modification is acceptable in this particular instance and can be approved under section 4.55(1A).

We would be pleased to discuss this application further with Council officers should that be required and if you have any queries, please contact David Kettle from our office.

Yours faithfully

DFP PLANNING PTY LTD



DAVID KETTLE
DIRECTOR

dkettle@dfpplanning.com.au

Reviewed: _____



Documents submitted with the application

1. Owners Consent
2. ASIC company extract
3. Amended Architectural Plans prepared by VIA Architects
4. Amended Landscape Plan prepared by CDA Design Group
5. Amended Civil Plans prepared by SGC
6. Current BASIX certificates submitted as part of the original