

19th December 2024

The CEO
Northern Beaches Council
PO Box 82
Manly NSW 1655

Dear Sir,

**Statement of Environmental Effects
Modification of Development Consent DA2023/1869
Demolition works and construction of a residential flat building
54 – 58 Beaconsfield Street, Newport**

1.0 Introduction

On 2nd October 2024 deferred commencement development consent DA2023/1869 was granted for demolition works and construction of a residential flat building on the consolidated allotment.

We have been engaged to prepare an application to modify the consent pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979 (the Act). This application seeks a number of architectural design refinements primarily relating to the internal layout of the apartments, amendments to the glazing line on the south facing balconies of units 105 and 205 to improve amenity and utility, the addition of skylights to units 201, 203, 204 and 205, an increase in the lift overrun and floor to floor heights to enhance buildability, the provision of lift and staircase enclosures at roof terrace level to address weatherproofing issues and amendment to the driveway gradient.

With the exception of the lift and staircase enclosures, the modifications are located predominantly within the approved building envelope such that the 3-dimensional form, streetscape appearance and landscape outcomes as approved are not materially compromised. Importantly, the spatial relationship of the proposal to adjoining development is maintained together with the residential amenity outcomes afforded through approval of the original application including a view sharing scenario with adjoining development to the north of the site.

To that extent Council can be satisfied that the development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of Section 4.55(2) of the Act.

2.0 Detail of Modifications Sought

Architectural modifications

The proposed modifications are shown clouded on the Revision F plans prepared by PBD Architects. The following modifications are shown clouded on the modified architectural plans:

- CH-01 Internal reconfiguration to all apartments in general.
- CH-02 Extension of basement shoring wall to G/F subterranean area (providing access doors via lobbies for drainage maintenance)
- CH-03 Amendment to glazing line on south facing balconies unit 105/ 205 to improve outdoor living/ furnishability
- CH-04 Addition of skylights for unit 201/ 203/ 204/ 205
- CH-05 Lift overrun increased to 3580mm
- CH-06 Floor to floor height increased
- CH-07 Lift enclosure
- CH-08 Amended driveway gradient

No changes are proposed to the previously approved basement layout, landscape and stormwater disposal regimes.

Modification/ deletion of conditions

Condition 1 - The application seeks the modification of this condition to reference amended architectural plans.

3.0 Section 4.55(2) of the 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, an application proposing alterations and additions to the existing dwelling house which will continue to relate to its surrounds and adjoining development in a manner consistent with that sought through approval of the original application.

The previously approved streetscape, privacy, solar access, view sharing and general amenity outcomes afforded by the original approval 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 and residential density do not change,
- The building form, footprint, height, floor space, car parking, landscaping and drainage circumstances are not materially altered,
- The modifications maintain the previously approved/ intended residential amenity outcomes (to residential properties within the vicinity of the site) in terms of privacy, visual bulk, acoustic privacy, overshadowing and view sharing.

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.

4.0 Pittwater Local Environmental Plan 2014

The Pittwater Local Environmental Plan 2014 (PLEP 2014) is the principal local environmental planning instrument applicable to the land. The relevant provisions of PLEP 2014 and the manner in which they relate to the site and the proposed development are assessed below.

4.1 Height of buildings

Pursuant to clause 4.3 of PLEP 2014 the maximum building height for development on the land is 8.5 metres. The stated objectives of this clause are as follows:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

It has been determined that the finished roof level of the development has been increased by 450mm and the lift overruns by between 250 mm and 730mm. Whilst the majority of the development continues to sit comfortably below the height standard the following building height blanket diagram demonstrates that a number of roof elements including portion of the lift overruns and the eastern lift/circulation stair enclosure breach the standard by varying extent.

These plans demonstrate that the western lift overrun breaches the height standard by between 620mm and 1.315 metres (15.4%) whilst the eastern lift overrun breaches the height standard by between 2.56 metres (30.1%), the eastern lift overrun by between 980mm (11.5%) and 2.27 metres (26.7%) with the eastern lift/stair enclosure and portions of the roof form breaching the standard by a maximum of 300mm or 3.5%.

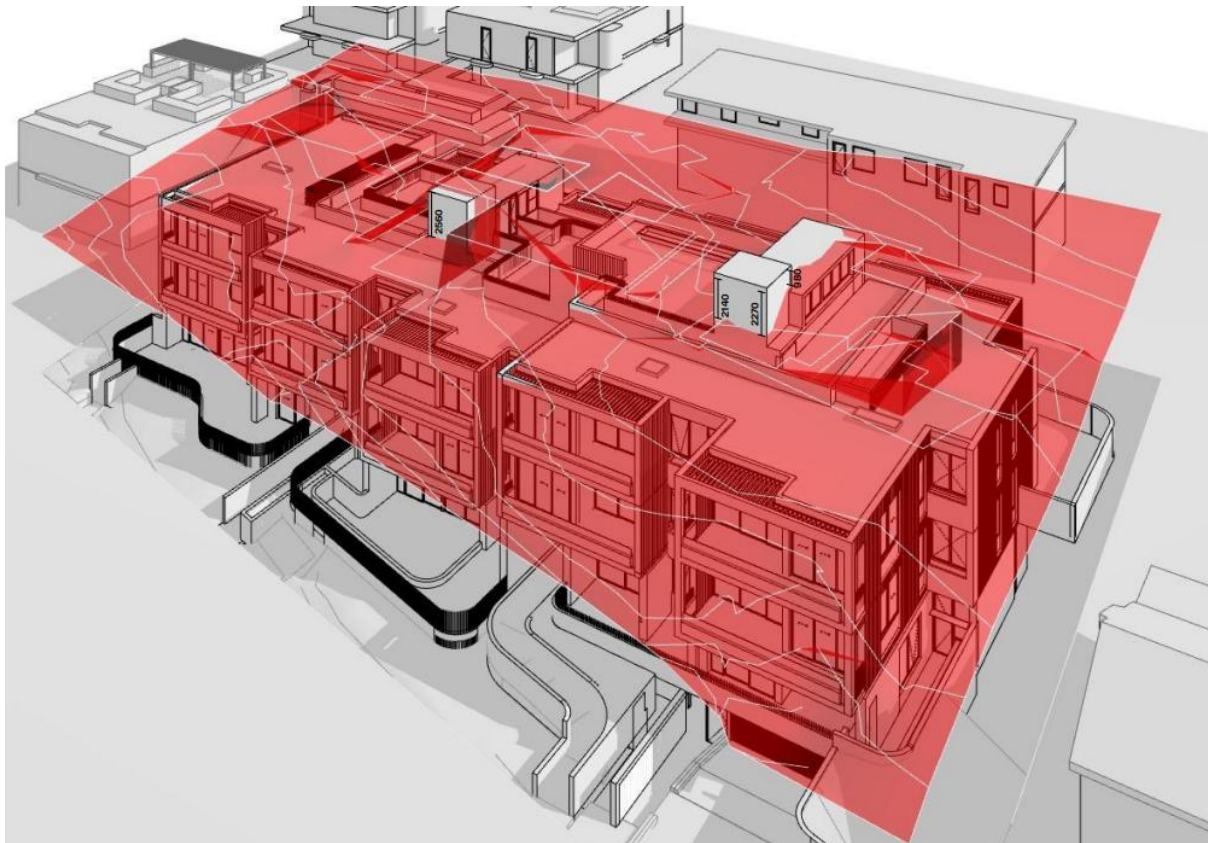


Figure 1 - Plan extract showing 8.5 metre building height standard breaching elements.

Although the clause 4.6 variation mechanism does not apply to an application made pursuant to section 4.55 of the Act, an assessment as to the consistency of the modifications when assessed against the objectives of the standard is as follows:

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

Response: The subject property is located within the Newport Locality. The Desired Future Character (DFC) statement at clause A4.3 of Pittwater 21 Development Control (P21DCP) plan is as follows:

The Newport locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape. Secondary Dwellings can be established in conjunction with another dwelling to encourage

additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations.

Any dual occupancy dwellings will be located on the valley floor and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any multi unit housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

Future development will maintain a height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.

Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

Newport's coastal setting is what contributes most to the distinctive character of the commercial centre. Responsive, energy efficient buildings will support and enhance this relaxed, beachfront character and its outdoor lifestyle, contributing to a unique sense of place. Contemporary design solutions within the commercial centre will respond to Newport's climate and setting, including

providing shade and shelter to streets and entries, generous private outdoor spaces, openings that capture ocean breezes, and shade elements.

In accordance with the Newport desired future character statement the building, with the exception of the minor building height breaching elements the proposal is compliant with the 8.5 metre height of buildings development standard the stepped building form appropriately responding to the topographical characteristics of the site.

The development continues to strike a balance between keeping the building low into the site to reduce its visual prominence and excavation with the resultant building form and height ensuring the development will sit below the height of surrounding tree canopy level. The contemporary and highly articulated building design incorporates a palette of natural materials and finishes and substantial landscaping which will enable the development to blend into the vegetated escarpment which forms a backdrop to the site.

The modifications do not compromise the previously approved landscape regime with the building continuing to sit within a landscaped setting. To that extent the proposed development will not be perceived as inappropriate or jarring in a streetscape or suburban context. The building has been designed to respects the natural features on the site consistent with the desired future character statement for the Newport Locality.

Having regard to the DFC statement, I am satisfied that that the building, displays a height and scale consistent with the desired character of the locality notwithstanding the building height breaching elements proposed.

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 proposed development by virtue of its height and scale, in particular the building height breaching elements, offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

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

Response: I note that this objective requires consideration to be given to the proposed buildings compatibility with the height and scale of existing development rather than limiting an assessment of building compatibility to the height and scale of development anticipated through strict compliance with the standard.

The consideration of building compatibility is dealt with in the Planning Principle established by the Land and Environment Court of New South Wales in the matter of *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*. At paragraph 23 of the judgment Roseth SC provided the following commentary in relation to compatibility in an urban design context:

22 *There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.*

The question is whether the building height breaching elements, as modified, contribute to the height and scale of the development to the extent that the resultant building form will be incompatible with the height and scale of surrounding and nearby development. That is, will the non-compliant building height breaching elements result in a built form which is incapable of coexisting in harmony with surrounding and nearby development to the extent that it will appear inappropriate and jarring in a streetscape and urban design context.

In this regard, I note that the building height breaching elements are limited to the lift core extensions, the eastern weatherproofing enclosure element and minor roof/balustrade edges with the vast majority of the development as viewed from Beaconsfield Street compliant with the 8.5 metre building height standard. The central location of the lift shafts ensure that they will not be readily discernible in a streetscape context and will not in any measurable manner contribute to unacceptable building height, bulk or scale. The overall height, bulk and scale the building as viewed from Beaconsfield Steet is entirely consistent with that established by surrounding development including the residential flat building to the west 60 Beaconsfield Street.

In this regard, I have formed the considered opinion that the non-compliant building elements will not contribute to the height and scale of the development to the extent that the resultant building forms will be incompatible with the height and scale of surrounding and nearby development. That is, the non-compliant building height breaching elements will not result in a built form which is incapable of coexisting in harmony with surrounding and nearby development to the extent that it will appear inappropriate or jarring in a streetscape and urban design context.

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 and scale of the development, notwithstanding the building height breaching elements, offensive, jarring or unsympathetic in a streetscape and urban context.

In this regard, it can be reasonably be concluded that, notwithstanding the building height breaching elements, the development is capable of existing together in harmony with surrounding and nearby development. Notwithstanding the building height breaching elements, the resultant development is compatible with the height and scale of surrounding and nearby development and accordingly the proposal achieves this objective.

(c) to minimise any overshadowing of neighbouring properties,

Response: The accompanying shadow diagrams demonstrate that the building height breaching elements will not cast any shadowing on the adjoining property to the north with associated shadowing falling onto the roof of the proposed development.

The location of the proposed lift overruns/ stair enclosures minimise/ prevent any overshadowing of neighbouring properties and accordingly this objective is satisfied notwithstanding the non-compliant building height breaching elements.

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

Response: Having inspected the site and identified available public and private view lines over and across the site, I am satisfied that the building height breaching elements will not give rise to any unacceptable view loss with a view sharing outcome maintained in accordance with the planning principle established in the matter of *Tenacity vs Warringah Council (2004) NSWLEC 140*.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

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

Response: The building height breaching elements do not themselves require excavation or modification of the landform.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

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

Response: The proposed areas of non-compliance will not adversely impact on the natural environment with no site disturbance directly attributed to the building height breaching elements proposed. The site is not listed as a heritage item or within a heritage conservation area.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

The non-compliant components of the development, as they relate to building height, demonstrate consistency with objectives of the zone and the building height standard objectives. Adopting the first option in *Wehbe* strict compliance with the building height standard has been demonstrated to be is unreasonable and unnecessary.

4.2 Density controls for certain residential accommodation

Pursuant to clause 4.5A(2) of PLEP 2014 for a residential flat building on land zoned R3 Medium Density Residential unless the development complies with a maximum dwelling density of 1 dwelling per 200m² of site area. The stated objectives of this control are as follows:

- (a) to achieve planned residential density in certain zones,*
- (b) to ensure building density is consistent with the desired character of the locality.*

The approved residential density is maintained.

4.3 Acid Sulfate Soils

Pursuant to clause 7.1 PLEP 2014 the site is mapped Acid Sulphate Soil Class 5. In accordance with the considerations at clause 7.1(2) PLEP as the proposed works are not within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land no further investigation is warranted in this instance.

4.4 Earthworks

In accordance with the clause 7.2 PLEP 2014 we rely on the geotechnical investigation prepared in support of the original application to confirm the acceptability of the earthworks proposed.

5.0 Pittwater 21 Development Control Plan

Having assessed the modified development against the applicable provision of P21DCP we note the following:

- The siting, scale, form and massing of the development is not altered with the modified proposal maintaining the previously approved building setbacks and spatial relationship with adjoining development,
- The modified proposal will not give rise to any adverse public or private view affectation,
- The previously approved waste collection arrangements are maintained,
- The previously approved off-street carparking arrangement is maintained.
- The modified proposal does not compromise the residential amenity outcomes afforded to adjoining development in relation to visual and aural privacy and solar access with no additional shadowing impacts as a consequence of the modifications proposed.
- The previously approved landscape and stormwater management regimes are maintained.
- A minimum 50% landscaped area is maintained.

6.0 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development/ Apartment Design Guide

Given the minor nature of the modifications sought, the development's performance when assessed against the provisions of SEPP 65 and the ADG are not compromised.

That said, the refinement in the layout of apartments will enhance the amenity of the development with the overall design quality of the development not compromised as consequence of the modifications sought with this submission accompanied by the required Architect Design Verification Statement prepared in accordance with section 102 of the Environmental Planning and Assessment Regulation 2021.

7.0 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):

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

The modified development responds positively to the relevant outcomes and built form controls of the Pittwater 21 Development Control Plan. The proposal is permissible pursuant to the provisions of Pittwater LEP 1993.

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 on 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?*

The modifications sought are contained predominantly within the approved building envelope, or not discernible as viewed from outside the site, with the 3 dimensional form, streetscape appearance and landscape outcomes as approved not compromised as consequence of the modifications sought.

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?*

The approved development will remain, in its modified state, a development which will continue to relate to its surrounds and adjoining development in the same fashion as originally approved in terms of view sharing, height, boundary setbacks, privacy and landscape outcomes.

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?*

No change.

Public domain

There are no public domain changes.

Economic impact in the locality

The proposed development will provide short term employment opportunities during construction.

Site design and internal design

i) *Is the development design sensitive to environmental conditions 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?*

The modifications sought are contained predominantly within the approved building envelope, or not discernible as viewed from outside the site, with the 3 dimensional form, streetscape appearance and landscape outcomes as approved not compromised as consequence of the modifications sought.

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 modifications will ensure that the development complies with the provisions of the Building Code of Australia. There will be no detrimental effects on the occupants through the building design which will achieve the relevant standards pertaining to health, safety and accessibility.

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 site safety or environmental impacts will arise during construction.

The suitability of the site for the development.

Does the proposal fit in the locality?

- *are the constraints posed by adjacent developments 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?*

The adjacent development does not impose any insurmountable development constraints. The site is well located with regards to utility services and public transport. There will be no excessive levels of transport demand created.

Are the site attributes conducive to development?

The site has no special physical or engineering constraints is suitable for the proposed development.

Any submissions received in accordance with this Act or the regulations.

It is envisaged that any submissions made in relation to the proposed development will be appropriately assessed by Council.

The public interest.

It is considered that the development will result in a significant addition of good design to the locality. The development is consistent with the adopted planning regime.

8.0 Conclusion

This application seeks a number of architectural design refinements primarily relating to the internal layout of the apartments, amendments to the glazing line on the south facing balconies of units 105 and 205 to improve amenity and utility, the addition of skylights to units 201, 203, 204 and 205, an increase in the lift overrun and floor to floor heights to enhance buildability, the provision of lift and staircase enclosures at roof terrace level to address weatherproofing issues and amendment to the driveway gradient.

With the exception of the lift and staircase enclosures, the modifications are located predominantly within the approved building envelope such that the 3-dimensional form, streetscape appearance and landscape outcomes as approved are not materially compromised. Importantly, the spatial relationship of the proposal to adjoining development is maintained together with the residential amenity outcomes afforded through approval of the original application including a view sharing scenario with adjoining development to the north of the site.

To that extent Council can be satisfied that the development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of Section 4.55(2) of the Act.

Having given due consideration to the relevant considerations pursuant to s4.15(1) of the Act it is considered that the application, the subject of this document, succeeds on merit and is appropriate for the granting of consent.

Yours sincerely

BOSTON BLYTH FLEMING PTY LTD

A handwritten signature in black ink, appearing to read 'Greg Boston', is written over a faint, illegible stamp or background.

Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director