

# SECTION 4.55(8)

**Address:** Nos. 37, 39, 41 & 43 Hay Street, Collaroy

**Proposal:** Seniors Housing

**JULY 2024**

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31 July 2024



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The Land and Environment Court of NSW  
Level 4, No. 225 Macquarie Street  
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## STATEMENT OF ENVIRONMENTAL EFFECTS

### SECTION 4.55(8) MODIFICATION DA NO. DA2023/0868 NOS. 37, 39, 41 AND 43 HAY STREET, COLLAROY

Dear Sir/Madam,

Application is made pursuant to Section 4.55(8) of the Environmental Planning and Assessment Act 1979 (EPAA), seeking modification to a consent issued by the NSW Land and Environment Court.

This application seeks to modify the floor area of units to increase the amenity of future occupants, without impacting the amenity of neighbouring properties. This Statement of Environmental Effects has been prepared with reference to the following documentation:

- Architectural Plans (Revision 1)
- Schedule of Modifications
- Stormwater Concept Plans (Revision H)
- Visual Impact Study (Issue 2c)
- BCA Compliance Assessment Report (Revision 3)
- Updated BASIX Certificate
- Access Report (Revision 5)
- Landscape Plan (Revision E)
- Arboricultural Assessment – Addendum Letter Support

#### Background

Site:	Nos. 37, 39, 41 and 43 Hay Street, Collaroy Lots 43 – 46 Section 12 Deposited Plan 10648
Local Government Area:	Northern Beaches Council
Approved Development:	'Demolition of x3 existing dwelling houses and construction of seniors housing development containing x10 units, x1 level of basement carparking and associated landscaping and civil works'
Reference:	Development Application No. DA2023/0868 Land and Environment Court Appeal No. 2023/266128 Deferred Commencement Consent issued 25 June 2024

## Proposed Modification

This modification seeks to increase the floor area of units to improve amenity for future occupants, without impacting the amenity of neighbouring properties.

Minor changes are proposed to site landscaping as a result of the proposed built form modification and slight extension of the building footprint. Modification to the roof is proposed by way of encompassing the additional built form, and skylights are proposed to increase sunlight penetration. Extension of the roof form will increase the maximum measured building height by 4.4 centimetres. It is also proposed to modify the garage door location.

Each modification has been clearly detailed in the schedule below.

### ***Schedule of Changes to Architectural Drawings (Revision 01, dated 19 July 2024)***

#### ***MOD105 Basement Plan***

- *Garage Door moved northward*

#### ***MOD106 Level 01 Plan***

- *Apartment 2: Carpark exhaust made smaller*
- *Glazing line of Apartments 3 to 5 moved eastward ranging between 1.6m and 2.62m*
- *Terraces of Apartments 3 to 5 moved eastward*
- *Glazing line of Apartment 4 Bedroom 1 moved westward 1.169m*
- *Apartment 4: internal changes to Laundry, Bathroom and Ensuite*
- *Glazing line of Apartment 5 Bedroom 2 moved westward 1.302m*
- *Apartment 6: Ensuite made larger*
- *Apartment 6: internal layout changes to Laundry, Bathroom and Bedroom 3*
- *Apartment 6: Bedroom 3 window located on southern facade*
- *Apartment 6: windows added to Bathroom and WIR*

#### ***MOD107 Level 02 Plan***

- *Apartment 7: Carpark exhaust made smaller*
- *Glazing line and terraces of Apartments 8 to 10 moved eastward ranging between 1.6m and 2.62m*
- *Glazing line of Apartment 8, Bedroom 2 moved westward 1.169m*
- *Glazing line of Apartment 10, Bedroom 1 moved westward 0.589m*
- *Apartment 9 Ensuite made larger*
- *Apartment 10: Ensuite made larger*
- *Apartment 10: internal layout changes to Laundry, Bathroom and Bedroom 3*
- *Apartment 10: Bedroom 3 window located on southern facade and external privacy screens extended across window*
- *Apartment 10: windows added to Bathroom and WIR*

#### ***MOD108 Roof Plan***

- *Roof made larger to apartments 8 to 10 to reflect changes on level below*
- *Skylights amended to reflect internal planning changes below*
- *Geometry of carpark exhaust reconfigured*

### **MOD112 Elevations 1**

- External finishes amended and notes updated
- Note that while glazing line has moved on Apartments 3 to 6 and 8 to 10 have moved it is not visually apparent on eastern or western elevation

### **MOD113 Elevations 2**

- External finishes amended and notes updated
- Internal changes reflected on northern and southern elevations including window and external screen revisions.

### **MOD114 Section AA &BB**

- Section AA: Garage door location moved northward

### **MOD115 Section CC & DD**

- Amended glazing and terrace line shown in relevant sections

### **MOD116 Section EE & FF**

- Amended glazing and terrace line shown in relevant sections

### **MOD117 Section GG**

- Amended glazing and terrace line shown in relevant sections.

### **MOD116 Compliance Diagrams**

- GFA plans and calculations updated to reflect higher GFA

### **MOD117 Compliance Diagrams**

- Plans and calculations updated to reflect changes
- Landscape and deep soil landscape areas decreased

### **MOD121 to 123 Shadow Diagrams**

- Updated to reflect changes between approved development and proposed development

### **MOD121 to 123 Shadow Sun Eye Views**

- Updated to reflect changes

### **MOD124 to 120 Schedule of Colours and Materials**

- Updated to reflect changes to materials with lighter colour palette

## Statutory Planning Framework

Section 4.55(8) of the EPAA enables the Court to consider modifications to development consents granted by the Court:

**(8) Modifications by the Court** *The provisions of this section extend, subject to the regulations, to enable the Court to modify a consent granted by it but, in the extension of those provisions, the functions imposed on a consent authority under subsection (1A)(c) or subsection (2)(b) and (c) are to be exercised by the relevant consent authority and not the Court.*

The proposed modification otherwise needs to satisfy the relevant provisions of Section 4.55(2) of the EPAA:

*(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 consent authority and subject to and in accordance with the regulations, modify the 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 consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent*
- (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 modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

In accordance with the relevant provision at Section 4.55(2)(a) of the EPAA, it is confirmed the proposal is 'substantially the same development', on any qualitative or assessment, given the minor nature of the modifications proposed:

- There is no change to the approved land use, being for seniors housing
- There is no change to the quantum of units, number of bedrooms or number of car parking spaces
- There is no change to the maximum building height or number of storeys

The material and essential features of the development remain unchanged. It is suggested it would be difficult, standing within the public domain at either Hay Street or Anzac Avenue, to discern the difference in appearance of the modified proposal, excepting perhaps the minor changes to the



colours and materials proposed, reflecting a lighter colour palette. The qualitative and quantitative changes to the approved development will be further scrutinised in the following section of the Statement, which examines impacts of the proposed development. **Figures 1 and 2** below provide an aerial axonometric view of the proposal to illustrate the minor nature of proposed modifications.



**FIGURE 1**

Perspective image illustrating proposed modification (yellow outline) overlaid on the approved development (Source: Visual Impact Study).



**FIGURE 2**

Perspective image illustrating an outline of the approved development (green outline) overlaid on proposed development (Source: Visual Impact Study).



Figures 3 and 4 below provide various perspective images of the proposed development from the corner of Hay Street and Anzac Avenue (top) and from the balcony of No. 38 Hay Street (below). Such perspectives reinforce the negligible difference in bulk, scale and appearance of the proposed development when viewed from these locations (see also Figure 5 over page), the only notable difference being changes to the proposed colours and materials, reflecting a lighter colour palette.



**FIGURE 3**

Perspective image of proposed development.



**FIGURE 4**

Perspective image of proposed development – base photograph taken at No. 38 Hay Street with permission (Source: Visual Impact Study).



**FIGURE 5**

Analysis of impacts: The approved development is outlined in green, and the proposed modified development outlined in yellow, with both being overlaid atop an existing photograph, taken with permission, at eye level from the balcony of No. 38 Hay Street (Source: Visual Impact Study).

### **Impact of Proposed Modifications**

In accordance with the requirements at Section 4.55(3) of the EPAA, 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.

The impact of the proposed modification has been assessed in accordance with Section 4.15(1) of the EPAA below.

#### **1. Statutory Planning Framework**

##### **1.1 State Environmental Planning Policy (Housing) 2021**

There is no change proposed to the site area, building height, number of units, total bedrooms, driveway or pedestrian entry locations, or to the car parking provided. The proposed development remains generally consistent with the requirements of SEPP (Housing). Compliance areas that have been modified as a result of the proposal are detailed below.

The object of Part 5 Housing for seniors and people with a disability is to determine where seniors living is permitted with consent, to establish development standards and site related requirements for seniors housing, to provide design requirements, and to prescribe non-discretionary development standards for particular matters relating to development for the purposes of independent living units that, if complied with, prevent the consent authority from requiring more onerous standards.



## Building Height

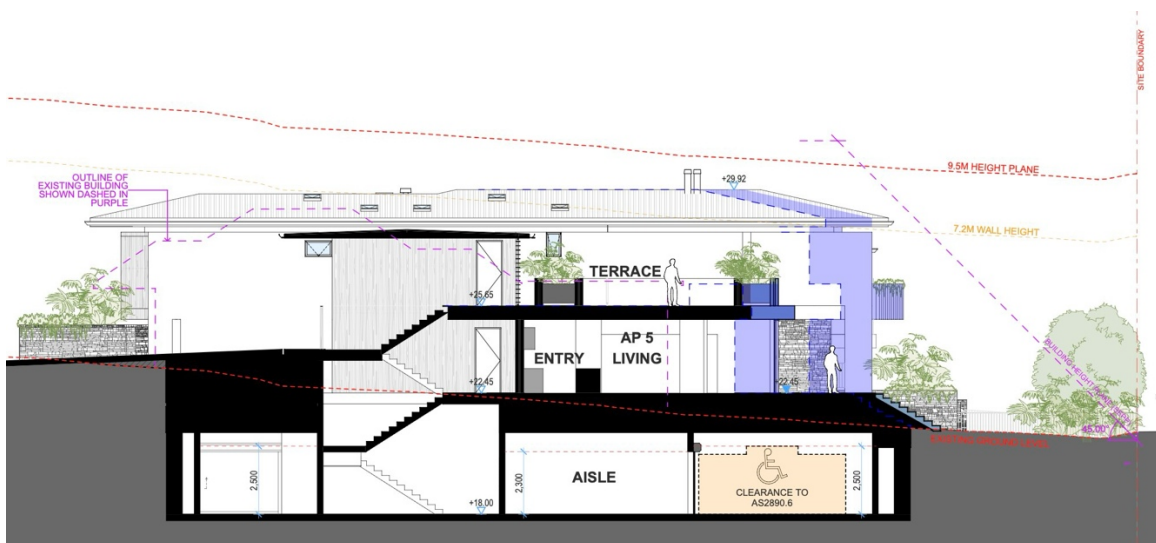
Section 108(2)(a) of SEPP (Housing) prescribes a non-discretionary development standard for building height:

*(a) no building has a height of more than 9.5m, excluding servicing equipment on the roof of a building,*

The pavilion form of the proposed development has been articulated to reflect the prevailing low-density streetscape, which has been accepted in the Court’s judgement as being sympathetic to the character of the existing buildings on the site, being 4 adjoining lots that presently have 2 storey dwellings.

As demonstrated in the preceding figures, the proposed modification has a negligible impact upon the height and bulk of development when viewed from most vantage points within the public domain along Hay Street and Anzac Avenue. The character of these streetscapes is preserved by the modification.

The amended plans include sections through the building that accurately depict the existing ground levels for the site, including where disturbed by existing earthworks. These various sections (see Section DD extracted at **Figure 6** below) demonstrate continued compliance with the prescribed maximum building height. The maximum building height of 8.734 metres (increase of 4.4 centimetres), is commensurate with the 2 – 3 storey form of development evident in the locality.



**FIGURE 6**

Section DD illustrating extension of the built form (in blue) and continued compliance with the prescribed 9.5 metre maximum building height (Source: Architectural Plans).

## Landscaped Area

The landscaped area proposed is 1,101.21m<sup>2</sup>, which is equivalent to 38.8% of the total site area. Section 108(2)(d) of SEPP (Housing) prescribes a non-discretionary development standard for landscaped area:

(d) a minimum landscaped area that is the lesser of—

- (i) 35m<sup>2</sup> per dwelling, or
- (ii) 30% of the site area,

A minimum 350m<sup>2</sup> of the site area (i.e. 10 dwellings x 35m<sup>2</sup> per dwelling) is therefore required to be provided as landscaped area.

The modified development is supported by the planting of trees and vegetation that enhance the desirable elements and scale of the streetscape, via a suitable palette of planting that is similar to and compatible with other plants in the street.

The proposed modified landscape arrangement proposes well in excess of this minimum prescribed requirement, and as Section 108(2)(d) is a non-discretionary development standard, the consent authority cannot require a more onerous standard for landscape provision.

It is further considered that an acceptable variety of planting species is maintained in suitable locations, and retention of existing significant trees affirmed.

The amended landscape outcome remains characteristic of the locality.



**FIGURE 7**

Landscaped area calculations (Source: Architectural Plans).

### Deep Soil

Section 108(2)(f) of SEPP (Housing) prescribes following standard for deep soil provision:

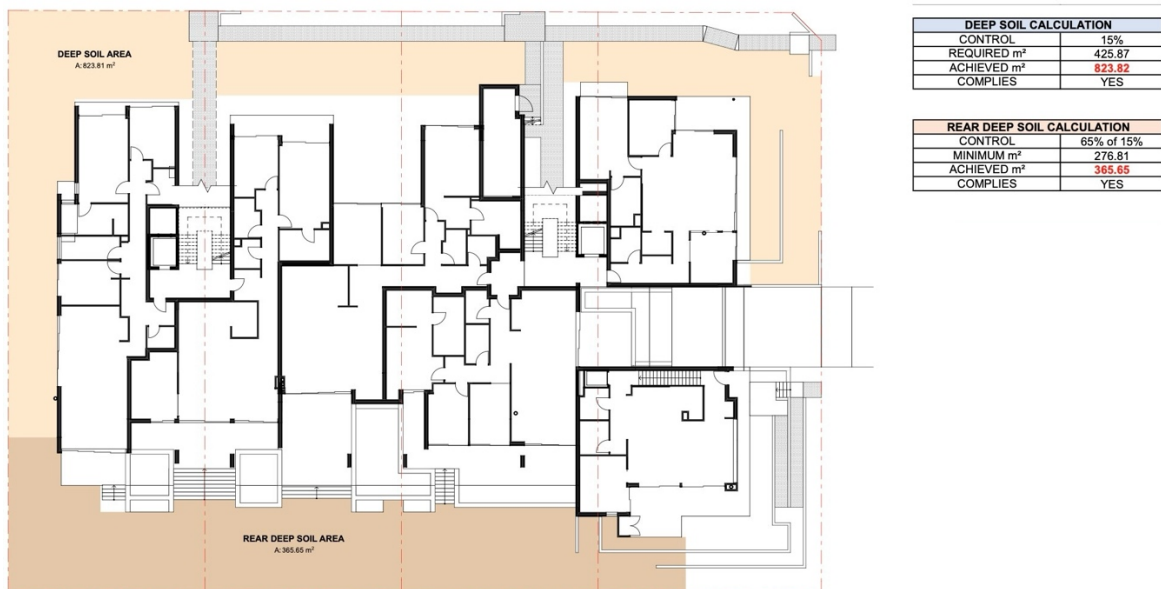
- (f) a deep soil zone on at least 15% of the site area, where each deep soil zone has minimum dimensions of 3m and, if practicable, at least 65% of the deep soil zone is located at the rear of the site,

The modified proposal comprises a total of 823.32m<sup>2</sup> of deep soil across the site, a reduction of 55.65m<sup>2</sup>. This corresponds to a total of 29% of the site area being available as deep soil, nearly double the minimum required 15%.

At least 65% of the minimum 15% site area of deep soil (i.e. 9.75% of site area) is required to be located in the rear of the site. The proposed modification comprises 365.65m<sup>2</sup> deep soil within the rear setback, a reduction of 57.29m<sup>2</sup>. This corresponds to a total of 12.9% of the site area being available as deep soil within the rear setback.

As Section 108(2)(f) is a non-discretionary development standard, the consent authority cannot require a more onerous standard for this matter, and accordingly, the proposal cannot be refused on the grounds of deep soil provision.

A detailed landscape plan has been prepared. The proposed building setbacks and significant deep soil zones provided at the periphery of the site, combined with a high standard of landscaping will ensure the development will remain consistent with established development evidenced within the streetscape.



**FIGURE 8**

Deep soil area calculations (Source: Architectural Plans).

### Private Open Space

The proposed modification impacts upon the approved areas and configuration of private open space, however, the modified areas continue to comply with the prescribed requirements of Section 108(2)(h) of SEPP (Housing):

(h) for a dwelling in a single storey building or a dwelling located, wholly or in part, on the ground floor of a multi-storey building—

(i) at least 15m<sup>2</sup> of private open space per dwelling, and



(ii) at least 1 private open space with minimum dimensions of 3m accessible from a living area located on the ground floor,

Note—The open space needs to be accessible only by a continuous accessible path of travel, within the meaning of AS 1428.1, if the dwelling itself is an accessible one—see Schedule 4, section 2.

(i) for a dwelling in a multi-storey building not located on the ground floor—a balcony accessible from a living area with minimum dimensions of 2m and—

(i) an area of at least 10m<sup>2</sup>, or

(ii) for each dwelling containing 1 bedroom—an area of at least 6m<sup>2</sup>,

Compliance with the non-discretionary development standard is demonstrated at Drawing No. 0638-MOD120 of the Architectural Plans. Accordingly, as Section 108(2)(h) and (i) are non-discretionary development standards, the consent authority cannot require a more onerous standard for private open space, and accordingly, the proposal cannot be refused on these grounds.

The modified development is also considered to maintain suitable visual privacy to the adjacent dwellings fronting Pittwater Road (Nos. 987, 989, 991 and 993 Pittwater Road). Compliance with the rear boundary setback requirement and the establishment of suitable landscaping within a substantial deep soil zone to the rear of the property will ensure an appropriate level of visual privacy is maintained to these properties.

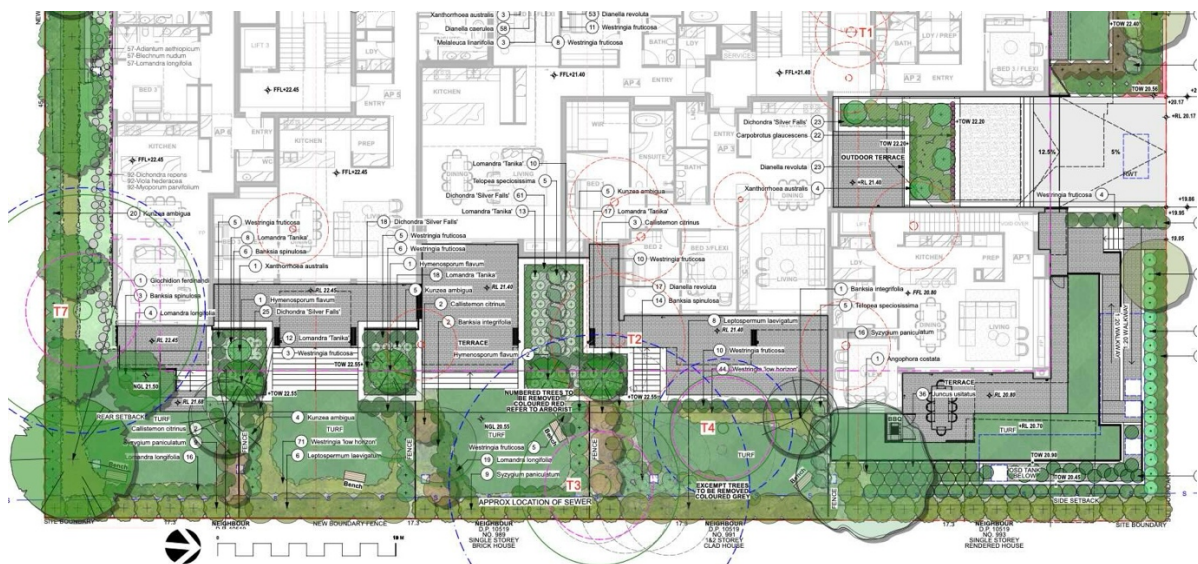


FIGURE 9

Deep soil and dense landscaping provided at rear of the site adjacent Nos. 987, 989, 991 and 993 Pittwater Road (Source: Landscape Plan).

The development is also compliant with the requirements of Section D8 Privacy of the Warringah Development Control Plan (DCP), ensuring the orientation of living areas, habitable rooms and windows are to private open space areas or to the street to limit overlooking.

Planter boxes, pergolas, balcony design and the like have been considered to screen a minimum of 50% of the required principal private open space of a lower apartments from overlooking from the upper apartment levels.

These various measures ensure views into the adjacent Pittwater Road properties are minimised, through compliance with the rear boundary setback requirement, appropriate fencing and substantial planting in deep soil zones, promoting views over and beyond the properties to the east fronting Pittwater Road, rather than directly into the private open spaces.

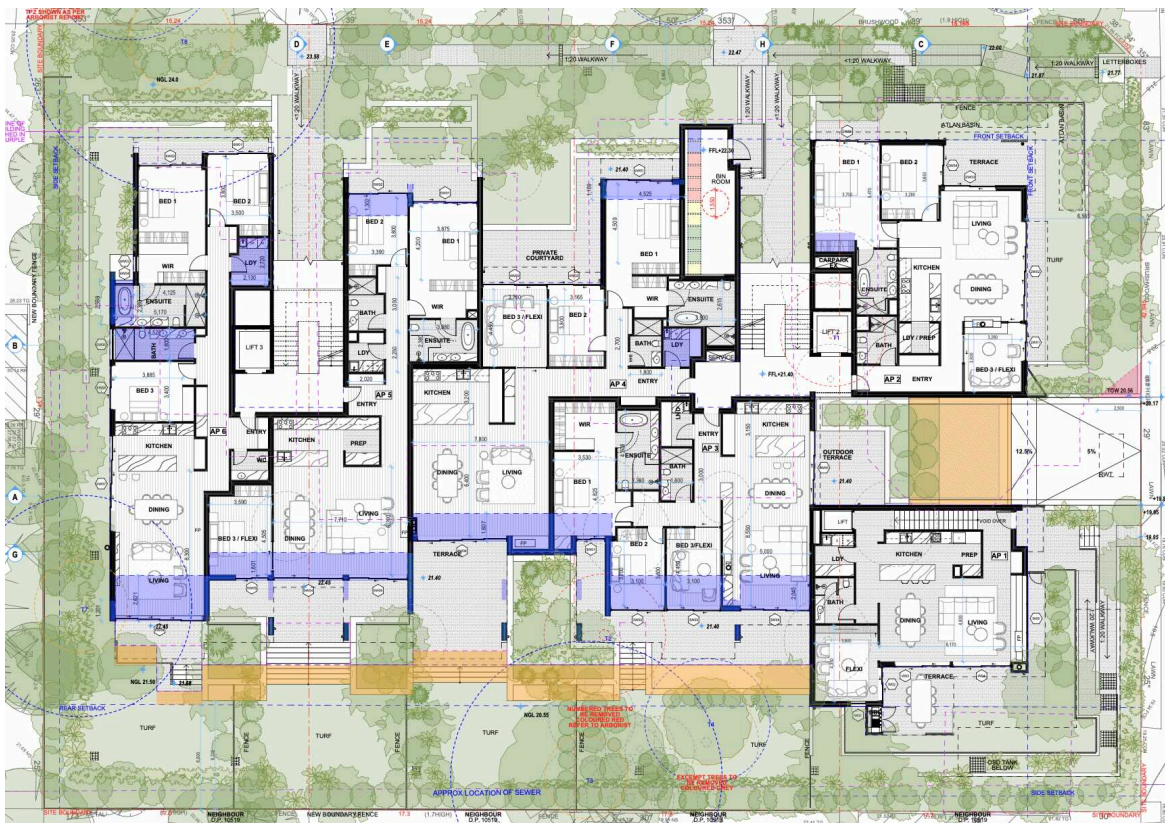
### Gross Floor Area

Section 108(2)(c) of SEPP (Housing) prescribes a non-discretionary development standard for FSR as follows:

*(c) the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less,*

The approved development comprised a maximum floor space ratio of 0.553:1, being a 10.6% variation to the non-discretionary development standard. The proposed modification proposes a maximum floor space ratio of 0.62:1 (an increase in gross floor area from 1,570.43m<sup>2</sup> to 1,760.60m<sup>2</sup>), which is largely effected by increasing bedroom and living room sizes, extending to east and west, which now represents a 24% variation to the non-discretionary development standard.

We have attempted to reflect these modifications by ‘colouring’ the floor plans, sections and elevations to represent the modifications sought.



**FIGURE 10**

Increased volume of gross floor area predominantly at east and west periphery of the building envelope, increasing the volume of living areas and bedrooms (Source: Architectural Plans).



**FIGURE 11**

Increased volume of gross floor area visible in southern elevation (Source: Architectural Plans).

Despite being a 24% variation to the non-discretionary development standard, it represents an increase of just 0.067:1 or 12% of GFA compared to the approved development. As this application is seeking a modification to the approved development, Clause 4.6 of the Warringah Local Environmental Plan 2011 is not applicable. It nonetheless contended that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that reasoning provided hereafter.

Despite the increase to FSR, the built form continues to be of a scale anticipated for the site, noting the Warringah Local Environmental Plan 2011 (LEP) does not impose a limit on floor space ratio upon development within the locality, but rather relies upon built form controls contained within the DCP to minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes; to ensure development is generally beneath the existing tree canopy level; and to minimise the impact of development on adjoining or nearby properties.

The modified built form continues to employ appropriate building articulation, compatible with the low density environment in which it is situated, and continues to comply with all relevant building envelope controls contained within the DCP, including but not limited to, wall heights, number of storeys, side boundary envelope, and front, side and rear setback requirements.

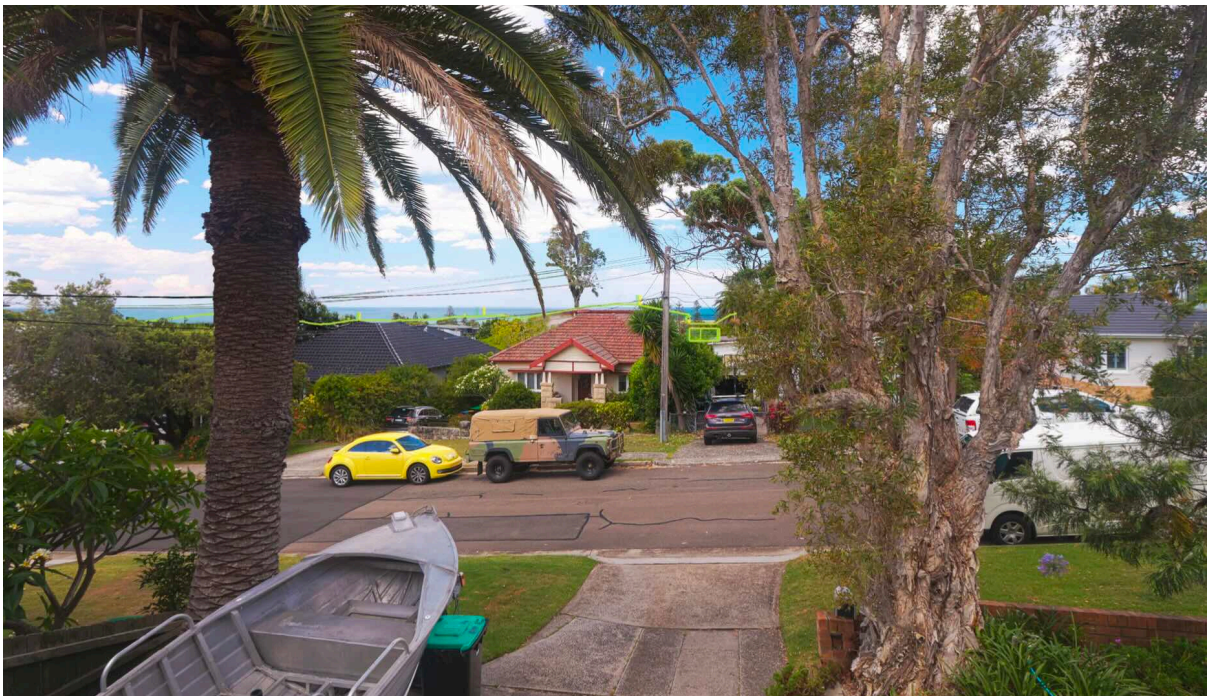
The proposed extension to the glazing line results in negligible impacts to view sharing when compared to the approved development. A comprehensive Visual Impact Study has been prepared. The process, view points and lens choice for analysis is documented in the study. Photographs were taken from the principal living areas and balconies of Nos. 32, 34, 36 and 38 Hay Street (the affected properties) with the permission of the owners. The Visual Impact Study that accompanies this submission provides an analysis of the views impacted by the proposed modification, and is compared to existing and approved development. An additional comparison image is provided in the analysis for each property to demonstrate the impact of the modification proposed, which is suggested to be negligible (see **Figures 12 and 13** over page).





**FIGURE 12**

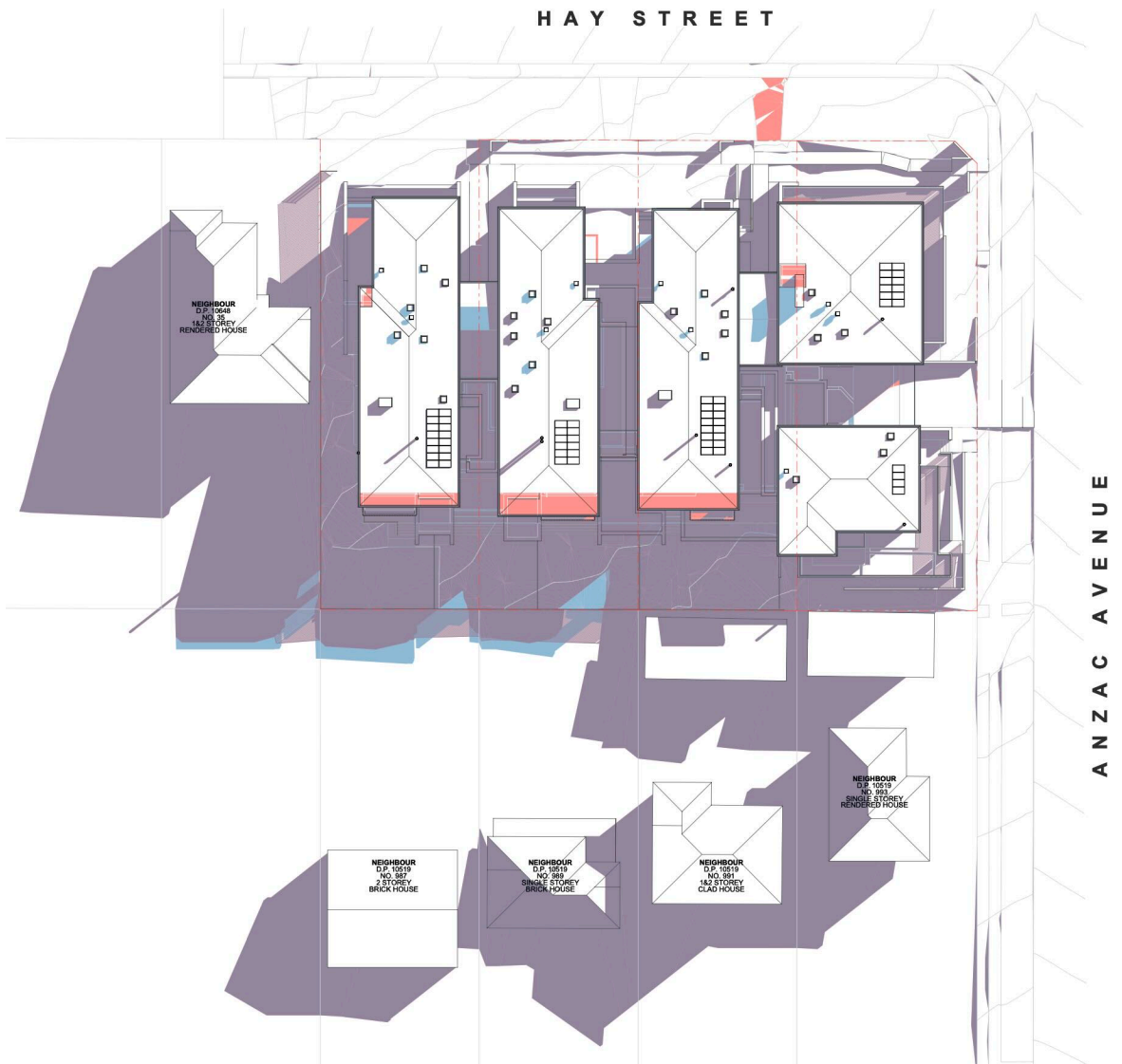
Analysis of impacts: The approved development is outlined in green, and the proposed modified development outlined in yellow, with both being overlaid atop an existing photograph, taken with permission, at eye level from the balcony of No. 32 Hay Street (Source: Visual Impact Study).



**FIGURE 13**

Analysis of impacts: The approved development is outlined in green, and the proposed modified development outlined in yellow, with both being overlaid atop an existing photograph, taken with permission, at eye level from the balcony of No. 34 Hay Street (Source: Visual Impact Study).

Additional overshadowing is also limited, with minor additional overshadowing proposed to the rear extent of the Pittwater Road properties to the rear, noting there is no impact between 9am – 12pm at mid winter.



**FIGURE 14**

Overshadowing impacts: Shadows from existing and approved development at 3pm at mid winter are illustrated in purple, with the proposed ‘additional impact’ illustrated in light blue (Source: Architectural Plans).

As is demonstrated in the perspective images, and further reinforced within the view impact analysis, the additional FSR is not discernible from the streetscape and continues to be screened and softened by proposed landscaping.

Despite the proposed extension of the approved development to the east (rear) of the site, the development continues to ensure privacy is maintained to neighbouring sites to the rear. This is achieved through the continued physical separation, and setback greater than the minimum required, as well as continuing to suitably orientate living areas and private open spaces to limit overlooking.



It is commonly accepted that a standard for FSR is a planning tool used by consent authorities to ensure the bulk and scale of development is compatible with the existing and desired streetscape and to minimise adverse impacts on adjoining land. This approach is consistent with previous decisions where the Court did not have express objectives to consider in relation to FSR and the Court had to infer these objectives - see *Zenere v Canterbury City Council* [2006] NSWLEC 263; *Kolin v Sydney City Council* [2006] NSWLEC 552.

"Compliance" with the non-discretionary FSR Standard in Section 108(2)(c) of SEPP (Housing) is considered unreasonable and unnecessary in the circumstances of this case, given the numerical non-compliance is with a non-discretionary development standard, the objective of which is to identify development standards for independent living units that, if complied with, prevent the consent authority from requiring a more onerous standard. It is not intended as an upper limit to development, and there is otherwise no maximum FSR standard for development in this locality.

From a streetscape perspective, the proposed bulk and scale is appropriate because:

- (a) it appropriately responds to the Subject Land's topography and "steps down" with the slight fall of the land;
- (b) the height of the development at 8.734 metres (increase of 4.4 centimetres) is commensurate with the two storey form otherwise evident in the locality;
- (c) the form of the proposed development has been articulated to reflect the prevailing low-density streetscape, which is sympathetic to the character of the existing buildings on the Subject Land, being 4 x adjoining lots that presently have 2 storey dwellings; and
- (d) the proposed landscaping seeks to retain and embellish the existing landscape treatment to the streetscape to provide sufficient screening and softening of the proposed built form such that the additional FSR sought is adequately absolved within the bulk and scale and not discernible from the streetscape.

In relation to the minimisation of adverse impacts on the surrounding land, the additional FSR has been integrated into the overall design and will not cause adverse:

- (a) overshadowing to neighbouring properties;
- (b) impacts on privacy of surrounding properties; or
- (c) impacts upon views from adjoining properties (see Visual Impact Study in relation to how the amended design has ensured key neighbouring views are retained for surrounding properties).

In relation to sufficient environmental planning grounds being provided to support variation to the non-discretionary development standard, the application relies on the following grounds to support the modified proposal:

- (a) The modified proposal does not impact the strong corner expression that responds to the streetscape and was previously accepted by the Court. The modified proposal seeks a built form that maintains the predominant existing built form on the street of 2 storeys with some 3 storey elements with appropriate landscaping, materials and finishes to ensure compatibility, noting the corner to the immediate north across Anzac Avenue also has a large prominent dwelling house opposite the site.



(b) The proposed additional FSR would be imperceptible in the streetscape, noting that the proposed development is otherwise compliant with the prescribed building height, setbacks, side boundary envelope and landscaping controls prescribed by SEPP (Housing), the LEP and DCP. Further, the proposed FSR exceedance has been distributed across the site in a highly articulated and modulated 2 storey stepped building form which appropriately addresses each of its Hay Street frontage (noting there is no impact upon the Anzac Avenue frontage).

(c) A reduction in FSR would reduce amenity for no identifiable benefit. One of the objects of the EPAA is to promote good design and amenity of the built environment (s 1.3(g)). The modified proposal has been designed to provide appropriate amenity by way of solar access and a sense of openness and views towards the ocean and headland, in addition to necessary accessibility and adaptability requirements.

(d) The modified proposal is consistent with the existing and desired future character of the locality, despite the proposed variation.

(e) The proposed variation will not result in unacceptable environmental impacts in terms of solar access, views or privacy. The proposed FSR provides a built form offering compliant levels of solar access to nearby residential development and there will not be a significant impact beyond a compliant building envelope, noting that the proposed development will have similar potential effects on water views to a built form compliant with the LEP development standards and DCP building envelope controls.

It is consequently suggested that strict application of the FSR standard is unnecessary and unreasonable on the basis that the inferred objectives of the FSR standard are achieved notwithstanding non-compliance with the non-discretionary development standard (as per *Winten Property Group Limited v North Sydney Council* [2001] NSWLE 46; *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118).

#### *Accessibility*

Schedule 4 Standards concerning accessibility and usability for hostels and independent living units is referenced by Section 85 of SEPP (Housing) as follows:

#### **85 Development standards for hostels and independent living units**

*(1) Development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the relevant standards specified in Schedule 4.*

An Access Report has been prepared to support the modified proposal, and specifically addresses each of the compliance matters contained within Schedule 4 of the SEPP. Accordingly, it is demonstrated that the proposed modification continues to comply with the requirements contained therein.

### **1.2 Warringah Local Environmental Plan 2011**

The proposed modification continues to ensure the development complies with all relevant development standards and requirements of the LEP.

The proposed modification does not alter compliance of the approved development when assessed against the prescribed requirements of the LEP, and is consistent with its stated aims, which include to improve access throughout Pittwater by facilitating the use of public transport,

and encourage a range of housing in appropriate locations that provides for the needs of the community both now and in the future.

### **1.3 Warringah Development Control Plan 2011**

The purpose of this plan is to provide best practice standards for development. The proposed modification continues to comply with relevant aspects of the DCP.

#### **Setbacks**

The proposed wall height continues to be a maximum of 7.2 metres, which complies with Part B1 Wall Height of the DCP (see Drawing Nos. 0638-MOD114 and 0638-MOD115). The extension to the length of the building (east west) does not alter the compliance with Part B3 Side Boundary Envelope and the DCP Map Side Boundary Envelopes (see Sections AA, BB and CC on Drawing Nos. 0638-MOD114 and 0638-MOD115 of the Architectural Plans).

Despite walls and glazing lines extending closer to the front and side boundaries, they remain consistent with, or are contained within the approved building envelope, satisfying side and front boundary setback requirements. Therefore, there is no change to compliance with Part B5 Side Boundary Setbacks, nor Part B7 Front Boundary Setbacks of the DCP.

The rear setback is proposed to be reduced along the southern portion of the development, however, the setback remains greater than the prescribed minimum 6 metres established by Part B7 Rear Boundary Setbacks of the DCP. Additionally, all elevated elements of the proposed rear terraces and balconies remain well setback behind the minimum 6 metres required to maximise preservation of the visual privacy to neighbouring sites to the rear.

#### **Views**

Part D7 of the DCP establishes the following control:

1. *Development shall provide for the reasonable sharing of views.*

The following objectives accompany this control:

- *To allow for the reasonable sharing of views.*
- *To encourage innovative design solutions to improve the urban environment.*
- *To ensure existing canopy trees have priority over views.*

The Visual Impact Study demonstrates that the amended proposal is reasonable with respect to the requirements of view sharing set out in D7 Views of the DCP, as guided by the planning principle established in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 at 25-29.

The pavilion style typology continues to be presented in this modification and preserves view corridors comparable to existing views benefiting properties to the west.

The proposed modification results in negligible changes to view sharing, which is supported by the View Impact Analysis.

## **Visual Privacy**

Despite the reduced setback of a portion of the built form to the rear boundary setback, visual privacy is maintained to properties located to the rear of the subject site (properties adjoining Pittwater Road).

The modification ensures that living areas and private open spaces continue to be oriented to limit overlooking. The rear setback continues to be compliant with DCP requirements, and the outdoor living spaces, with the establishment of appropriate landscaping along the rear boundary (see **Figure 9**) are likely to provide views over and beyond the properties to the east fronting Pittwater Road, rather than directly into the private open spaces.

It is therefore considered that the proposed modification is consistent with the controls and objectives contained within Part D8 Privacy.

## **External Appearance**

Part D10 Colours and Materials of the DCP establishes the following objective:

*To ensure the colours and materials of new or altered buildings and structures are sympathetic to the surrounding natural and built environment.*

An updated 'lighter' colour palette is proposed, however, it continues to be sympathetic to the surrounding natural and built environment, which includes tones of the blue ocean, green trees, and lighter toned buildings.

Additional skylights are also proposed to dwellings, however, they are not visually dominating when the proposed modification is viewed from the street, and will allow greater solar amenity for future occupants of the development. The proposed modification is therefore consistent with Part D11 Roofs.

## **2. Impacts of the Development**

### **2.1 Arboricultural Impacts**

The Architectural Plans have been reviewed by the project arborist to make comments and recommendations relating to potential impacts of the proposed modification on existing trees within the subject site and trees on neighbouring sites impacted by the proposed modification. Accordingly, a supporting letter has been prepared to demonstrate that any potential impacts are minimised.

Additional encroachment into the TPZ will result to tree Nos. 3, 4 and 7, however, it is noted the additional encroachment will not result in any long term impact. The supporting letter relates the following comments:

*Tree 3: To be retained, proposed works incur encroachment increased to 25.29m<sup>2</sup> additional 17.06m<sup>2</sup>. Now a major encroachment of 13.23% and will not result in any long term impact.*

*Tree 4: To be retained, proposed works incur encroachment increased to 8.95m<sup>2</sup> additional 8.84m<sup>2</sup>. Now a major encroachment of 23.95% and will not result in any long term impact.*

*Tree 7: To be retained, proposed works still incur major encroachment to TPZ increased to 28.66%. Above ground encroachment increased to 13.43m<sup>2</sup>, an additional 3.37m<sup>2</sup> with structure using tree sensitive construction methods. The encroachment, adjusted for tree sensitive*



methods, is still estimated to be 18.1%. Setback to in ground structure to be > 1.9m and as per root investigation no woody roots were found in this area, the exposed roots (which are on the compression side) will not result in any long-term impact.

### **3. Suitability of the site for the development**

The site is not affected by any known natural or technological constraints that would prevent development for the purpose of seniors housing in accordance with the zone objectives.

The modified development has no impact on determining the suitability of the site to accommodate the proposed seniors housing development.

The development is further consistent with the principles of SEPP (Housing) which include enabling the development of diverse housing types, including housing for seniors and people with a disability, ensuring new housing development provides residents with a reasonable level of amenity and promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services.

### **4. Submissions**

Any submissions arising from public exhibition, notification of adjoining property owners, or perhaps via notification to those that made submissions to the previous application, will be responded to when the content of such submissions in relation to this modification are made available.

### **5. Public Interest**

The proposed modification is considered to be in the public interest, as the development promotes the provision of housing which meets the diverse needs of the community.

### **Threshold Test**

The proposal remains substantially the same development as that approved in Development Application No. DA2023/0868, seeking consent for the demolition of existing structures and construction of a seniors housing development comprising 10 independent living units at Nos. 37, 39, 41 and 43 Hay Street Collaroy.

The modification relates to an extension of the built form to improve the internal layout of apartments by increasing their volume, which is contained within the building envelope established by Council's built form controls. Minor changes are proposed to landscaping as a result of the proposed built form modifications, and further minor changes are proposed for the colours and materials palette.

In accordance with the requirements at Section 4.55(3) of the EPAA, in determining an application for modification of a consent under this section, the adequate information has been provided to enable 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. These matters have been addressed within this Statement.

## Conclusion

The proposed modification is suggested to have minimal environmental impact.

The development to which the consent as modified relates is otherwise substantially the same development as that for which the consent was originally granted.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Daniel', with a long horizontal line extending to the right.

Daniel McNamara  
**Director**