

18th July 2023

The CEO
Northern Beaches Council
PO Box 82
MANLY NSW 2095

Dear Sir,

**Statement of Environmental Effects
Modification of Land and Environment Court Issued Consent
East Coast Property Development Pty Ltd ATF East Coast Property
Development Unit Trust v Northern Beaches Council
Seniors Housing
4 Alexander Street, Collaroy**

1.0 Introduction

On 15th June 2022 the Land and Environment Court of New South Wales (the Court) granted development consent (2022 NSWLEC 1305) for the demolition of the existing dwelling and the construction of a seniors housing development incorporating 5 x 3 bedroom in-fill self-care housing units and car parking for 9 vehicles on the subject site (DA2021/1805).

We have been engaged to prepare an application to modify the consent pursuant to Section 4.55(8) of the Environmental Planning and Assessment Act 1979 (the Act). Specifically, the modifications provide for a refinement in the architectural, landscape, stormwater and flood management detailing of the approved development to enhance internal layout efficiency, serviceability and constructibility. Such modifications include a minor increase in overall building height to facilitate the provision of required services, the provision of 2 plunge pools at the rear of the site and the removal of the flood gate from the driveway based on the findings of further flood modelling.

The modifications are generally contained within the approved building envelope such that the 3 dimensional form, streetscape appearance and landscape outcomes as approved are not compromised as consequence of the modifications sought. Importantly, the spatial relationship of the proposal to adjoining development is maintained together with a complimentary and compatible streetscape presentation and appropriate residential amenity outcomes including privacy, solar access and view sharing.

To that extent Council can be satisfied that the modifications involve minimal environmental impact and 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(8) of the Act.

2.0 Detail of Modifications Sought

Architectural modifications

The proposed modifications are shown clouded on Architectural plans prepared by PBD Architects. The modifications can be summarised as follows:

- Proposed modifications to skylights including deletion of 2 skylights over unit 2.01 and updated sizes of skylights over Unit 1.02 and 1.03,
- Additional storage room at basement level,
- Updated interior layout generally,
- Modification to façade window openings and configurations generally,
- Additional metal framed louvre awning to Level 2,
- Proposed removal of flood gate from driveway and associated DA Condition 28,
- Proposed external design modifications including additional BBQ benches, planters, fences, and gates for maintenance access to side planters at rear (Level 1),
- Updated stormwater concept design,
- Associated landscape design update including:
 - a) Level 1: Proposed min. 1.5m wide grass swale at existing ground levels, based on overland flow assessment by civil. Eng,
 - b) Level 1: Proposed 2 additional private plunge pools at rear,
 - c) Level 1: Revised boundary fencing height and design at rear,
 - d) Level 1: Revised external levels,
 - e) Level 1: Revised external backyard,
 - f) Ground Floor: Revised front garden design to G.01 and around OSD tank area,
- Proposed building height increase including adjustments to floor levels to:
 - Level 1: RL 7.73
 - Level 2: RL 11.03

Roof: RL 14.28

- Updated roof layout including adjustment to the extent of roof overhang, lift overrun structure, services exhaust ventilation, services enclosure, and photovoltaic panels. Proposed deletion of DA Condition 8 as part of the proposed amendments at roof level,
- Updated extent of shoring and retention generally,
- Modification to proposed car parking arrangement.

This submission is to be read in conjunction with the following amended/updated documents:

- SEPP 65 Design Verification Statement prepared by PBD Architects,
- Amended landscape plans prepared by Conzept Landscape Architects
- Amended civil and stormwater plans prepared by Woolacotts Consulting Engineers,
- Overland Flow Assessment Report prepared by Woolacotts Consulting Engineers,
- BCA Compliance Statement prepared by BM+G,
- Access Assessment prepared by Jensen Hughes,
- Geotechnical Addendum prepared by Alliance, and
- BASIX Certificate prepared by Aspire Sustainability Consulting.

Modification to conditions

The application also seeks the modification/ deletion of the following conditions:

Condition 1 - Approved Plans and Supporting Documentation

This condition is to be amended to reflect the modified plans and documentation referenced above.

Condition 7 - On Slab Landscape Works

This condition is to be modified to reference the amended landscape plan rather than the specific soil depths identified.

Condition 8 – Green Roof

This condition is to be deleted to simplify buildability, reduce potential water penetration issues and minimise building maintenance.

Condition 28 and 80 –Flood Gate

These conditions are to be deleted on the basis of the advice contained within the accompanying Overland Flow Assessment Report prepared by Woolacotts Consulting Engineers which confirms that the flood gate is no longer required.

Condition 57 - Landscape Completion

This condition is to be modified to reference the amended landscape plan which incorporates the required planting.

Condition 63 and 64 – Disabled Parking Spaces/ Shared Zone Bollard

These conditions are to be deleted as all car parking is shown in pre-adaption configuration with the approved parking utilised as adaptable parking spaces by individual owners as necessary.

Conditions 16, 17 and 27 are to be updated to reference the amended reports submitted in support of this application.

3.0 Section 4.55(2) and 4.55(8) of the Environmental Planning and Assessment Act 1979

Section 4.55(2) of the Act provides that:

- (1) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if:*
 - (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
 - (b) *it has notified the application in accordance with:*
 - (i) *the regulations, if the regulations so require, and*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
 - (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*

(d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

(1A) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.*

In answering the above threshold question as to whether the proposal represents “substantially the same” development the proposal must be compared to the development for which consent was originally granted, and the applicable planning controls.

In order for Council to be satisfied that the proposal is “substantially the same” there must be a finding that the modified development is “essentially” or “materially” the same as the (currently) approved development - Moto Projects (no. 2) Pty Ltd v North Sydney Council [1999] 106 LGERA 298 per Bignold J.

The above reference by Bignold J to “essentially” and “materially” the same is taken from Stein J in Vacik Pty Ltd v Penrith City Council (unreported), Land and Environment Court NSW, 24 February 1992, where his honour said in reference to Section 102 of the Environmental Planning and Assessment Act (the predecessor to Section 96):

“Substantially when used in the Section means essentially or materially or having the same essence.”

What the abovementioned authorities confirms is that in undertaking the comparative analysis the enquiry must focus on qualitative elements (numerical aspects such as heights, setbacks etc) and the general context in which the development was approved (including relationships to neighbouring properties and aspects of development that were of importance to the consent authority when granting the original approval).

When one undertakes the above analysis in respect of the subject application it is clear that the approved development remains, in its modified state, a development which will continue to relate to its surrounds and adjoining development in a similar fashion as originally approved in terms of streetscape, design quality, view sharing, height, boundary setbacks, privacy and landscape outcomes.

The Court in the authority of Stavrides v Canada Bay City Council [2007] NSWLEC 248 established general principles which should be considered in determining whether a modified proposal was “substantially the same” as that originally. A number of those general principles are relevant to the subject application, namely:

- The proposed use does not change,
- The overall design quality of the development is not compromised nor its contribution to the streetscape,
- The external building appearance, envelope and volume as perceived from adjoining properties and the public domain are not significantly altered,
- The modifications maintain the previously approved residential amenity outcomes in terms of views, privacy, visual bulk and overshadowing, and
- The development continues to be safe from flooding hazard.

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) and 4.55(8) of the Act.

5.0 State Environmental Planning Policy (Housing for seniors or people with a disability) 2004.

In accordance with clause 2(1)(da) of Schedule 7A Savings and Transitional Provisions within State Environmental Planning Policy (Housing) 2021 the provisions of the repealed SEPP HSPD continue to apply to this modification application.

Development standards to be complied with

Pursuant to clause 40 of SEPP HSPD a consent authority must not consent to a development application unless the proposed development complies with the standards specified in this clause:

40(4) Height in zones where residential flat buildings are not permitted

(a) The height of all buildings in the proposed development must be 8 metres or less, and

Comment: The amended proposal increases the approved uppermost ceiling height by 300mm resulting in a building height breach at each corner of the proposed development as follows:

North-eastern corner - 1796mm (22.45%)
 North-western corner - 760mm (9.5%)
 South-western corner - 300mm (3.75%)
 South-eastern corner - 747mm (9.33%)

We note that clause 4.6 does not apply to an application made pursuant to section 4.55 of the Act. That said, the acceptability of the additional building height breach when assessed against the implicit objectives of the building height standard is as follows.

Note: The objectives of the building height standard at clause 4.3 of Warringah Local Environmental Plan 2011 have been adopted as reflecting the height of development anticipated in the R2 Low Density Residential zone.

Consistency with implicit objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the implicit objectives of the standard is as follows:

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

Comment: Development within the site's visual catchment, which includes development within the B2 Local Centre/ 11 metre height zone to the north and east of the subject site and the R2 Low Density Residential/ 8.5 metre height zone to the south and west of the site is eclectic in nature with the residential zoned land occupied by 1, 2 and 3 storey dwelling houses interspersed by residential flat buildings and the Local Centre zone land currently in transition with a number of older 1 and 2 storey commercial and mixed use buildings having been replaced with more contemporary 3 and 4 level shop top housing building forms. The height and scale of surrounding development is depicted in the following Figures.



Figure 2 - View looking east past subject site towards adjacent B2 Local Centre zoned land upon which an 11 metre height standard applies



Figure 4 - View looking west past subject site towards 1, 2 and 3 storey low and medium density residential development located upon R2 Low Density Residential/ 8.5 metre building height zoned land within the sites visual catchment

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 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, 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.

We note that the non-compliant building elements as viewed from Alexander Street remain setback behind the façade alignment of the compliant building elements below such that they are recessive elements as viewed from the street. The overall height, bulk and scale the building as viewed from the street frontage is consistent with that established by other development located both within the B2 Local Centre and R2 Low Density Residential zoning within the sites visual catchment. I note that the southern (rear) edge of the proposed roof form sits below the 8.5 metre building height standard which applies to permissible forms of development on the land as viewed from the properties to the rear of the site.

In this regard, we 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 form 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.

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment: In relation to visual impact, we note that the increased setbacks proposed to the non-compliant building elements ensure that the breaching elements are visual recessive as viewed from surrounding properties and in a streetscape context. Visual impacts have been minimised through the adoption of these increased setbacks. We also rely on the analysis provided in response to objective (a) to demonstrate that visual impacts have been minimised and the objective achieved in this regard.

Having identified potential public and private view corridors across the site we have formed the considered opinion that the non-compliant building height elements will not give rise to any public or private view affectation given the location of the breaching elements and their juxtaposition with surrounding development.

In relation to privacy, we are also satisfied that the building height breaching elements will not themselves give rise to unacceptable privacy impacts given the general compliance of the development with the 8.5 metre building height standard applicable to permissible forms of development on the site where the proposal adjoins the adjacent R2 Low Density Residential zoned land. The greatest area building height breach is located adjacent to the service area associated with the adjoining 11+ metre high cinema building to the east of the site.

The shadow diagrams demonstrate that the non-compliant building height elements will not result in non-compliant shadowing impacts to any adjoining residential property between 9am and 3pm on 21st June with the solar access outcomes achieved through approval of the original application not compromised.

In this regard, we have formed the opinion that the design of the development has minimised visual impacts, disruption of views, loss of privacy and loss of solar access and accordingly this objective is achieved notwithstanding the building height breaching elements.

(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment: The non-compliant building height elements will not be readily discernible as viewed from any coastal or bushland environments. In the event that the non-compliant building height elements are visible from Collaroy Beach and its immediate environs we are satisfied that the recessive nature of the non-compliant building height elements as potentially viewed along the Alexander Street frontage has ensured that any adverse impacts have been minimised.

In any event, notwithstanding the height building breaching elements, the height, bulk and scale of the building will not be perceived as inappropriate or jarring having regard to height of development located within the same visual catchment, with the building height breaching elements not giving rise to adverse impact on the scenic quality of Warringah's coastal and bush environments. This objective is achieved notwithstanding the building height breaching elements proposed.

(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

Comment: To the extent that the non-compliant building height elements are visible from public places including Collaroy Beach, Alexander Street and Pittwater Road, for the reasons previously outlined we are satisfied that the height, bulk and scale of the building will not be perceived as inappropriate or jarring having regard to the height established by development located within the same visual catchment.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, in particular the building height breaching elements of the building, offensive, jarring or unsympathetic in a streetscape context. The building height breaching elements will not give rise to unacceptable visual impacts when viewed from any public places.

Having regard to the above, the non-compliant component of the building will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the building height standard. Given the developments consistency with the objectives of the height of buildings standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

Sufficient environmental planning grounds

Sufficient environmental planning grounds exist to justify the variation to the height of buildings standard. Those grounds are as follows:

Ground 1 – Topography and flooding

The topography of the land falls approximately 4 metres across its surface in a north easterly direction. The ability to lower the development or provide a stepped floor plate to ensure compliance with the height standard is frustrated by localised flooding which occurs adjacent to the north eastern corner of the property. This has necessitated the raising of the ground floor apartment to achieve necessary flood mitigation outcomes with a corresponding increase in the floor levels of the apartments above.

The combination of site topography and flooding contribute to making strict compliance with the building height standard more difficult to achieve and to that extent are environmental planning grounds put forward in support of the extent of the building height breach proposed.

Ground 2 - Achievement of aims of SEPP HSPD

I note that the North District Plan indicates that there will be a 47% increase in the number of people aged 65 years and older in the next 15 years. In this regard, the proposal will meet a clear and increasing demand for seniors housing on the Northern Beaches enabling existing residents to age in place.

A variation to the building height standard facilitates approval of the development which will achieve the aims of SEPP HSPD being to encourage the provision of housing that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
- (b) make efficient use of existing infrastructure and services, and*
- (c) be of good design.*

Ground 3 - Objectives (c) and (g) of the Act

Objective 1.3(c) of the Environmental Planning and Assessment Act 1979 is:

“to promote the orderly and economic use and development of land,”

Compliance with the height of buildings standard would necessitate a significant reduction in floor space in circumstances where the site is ideally suited to this form of development given its immediate proximity to the Collaroy Beach Local Centre and the B-Line bus service.

Under such circumstances strict compliance would not promote the orderly development of land.

The building is of exceptional design quality with the variation facilitating a quantum of floor space that provides for contextual built form and streetscape compatibility, the maintenance of appropriate residential amenity in terms of views, privacy and solar access and the delivery of housing for seniors and people with a disability consistent with objective (g) of the Act.

The additional building height sought by this applicant is consistent with objective (h) of the Act being to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants noting that the additional building height will enable the building to be constructed in accordance with the BCA as it relates to class 2 buildings.

For the above reasons there are sufficient environmental planning grounds to justify contravening the development standard.

(b) A building that is adjacent to a boundary of the site must be not more than 2 storeys in height, and

Comment: The modifications do not alter the approved number of storeys.

(c) A building located in the rear 25% area of the site must not exceed 1 storey in height

Comment: The building remains compliant with the standard.

Self-contained dwellings

Schedule 3 of the SEPP specifies standards that self-contained dwellings must be designed to be in accordance. It is normal for these requirements to form conditions of development consent. The self-contained dwellings as modified are able to comply with the relevant provisions and it is usual for the Council to condition certification of the finished dwellings to conform to these standards.

Standards that cannot be used to refuse development consent for self contained dwellings

Clause 50 of the SEPP requires that a Consent Authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a self-contained dwelling on any of the following grounds:

a) **building height:** *if all proposed buildings are 8 metres or less in height*

Comment: The buildings non-compliance with the height standard has been previously addressed.

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

Comment: The previously approved FSR of 0.65:1 is maintained.

c) **Landscaped Area:** *a minimum of 30% of the area of the sites is to be landscaped,*

Comment: The proposed development continues to incorporate 365m² soft landscaped area equating to 30% of the site area in strict accordance with this standard..

d) **Deep Soil Zones:** *if, in relation to that part of the site that is not built upon, paved or otherwise sealed, there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the area of the site. Two thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3 metres*

Comment: The modified development continues to provide 204m² of deep soil area representing 17% of the site although some of these areas have a dimension of less than 3 metres. That said, compliant deep soil landscape opportunity exist at the front and rear of the subject property with deep soil landscape opportunity available down both side boundaries of the property consistent with the dimension anticipated for residential development in the zone. The extent of deep soil landscaping is considered to be acceptable given the ability to implement the landscape regime as depicted on the accompanying plans prepared by Conzept Landscape Architects.

e) **solar access:** *Living rooms and private open spaces for a minimum of 70% of the dwellings of the development must receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter;*

Comment: the development remains compliant with the minimum 70% of the dwellings receiving a minimum of 3 hours direct sunlight between 9am – 3pm in mid-winter with 80% of apartment satisfying this standard.

f) private open space for in-fill self-care housing:

- i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and*
- ii) In the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area.*

Comment: All terraces/ balconies continue to exceed the minimum prescriptive standards associated with SEPP and comprise functional spaces, extending from the living/dining room areas.

g) Parking: at least the following is provided:

- i) 0.5 car spaces for each bedroom where the development application is made by a person other than the Department of Housing or a local government or community housing provider.*

Comment: The development continues to provide compliant off-street carparking.

6.0 Warringah Local Environmental Plan 2011

The land is zoned R2 Low Density Residential pursuant to Warringah Local Environmental Plan 2011 (WLEP). Seniors housing as defined by the LEP is a prohibited use in the zone. However, the use remains permissible with consent via the operation of SEPP (HS&PD) 2004 and the operation of Clause 1.9 of the LEP. SEPP (HS&PD) 2004 is not omitted from operation by Clause 1.9(2) of the LEP and accordingly is the operative planning instrument.

Height of buildings

The provisions of SEPPHSPD prevail in relation to building height. The acceptability of the proposed building height has been previously addressed in this submission.

Heritage conservation - Heritage Impact Statement

Pursuant to clause 5.10(4) of WLEP the consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.

Further, pursuant to clause 5.10(5) the consent authority may, before granting consent to any development:

- (a) on land on which a heritage item is located, or*
- (b) on land that is within a heritage conservation area, or*

(c) on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

The subject property is not heritage listed or located within a heritage conservation area however is located within the vicinity of a number of heritage items namely:

| | | | | |
|--|-----------------------------|--------------------------|-------|-----|
| Former Arlington Amusement Hall | 1056–1066 Pittwater Road | Lots 20–25, DP 218990 | Local | I20 |
|--|-----------------------------|--------------------------|-------|-----|

| | | | | |
|--|------------------------|--|-------|-----|
| Collaroy Cinema (facades and interiors) | 1097 Pittwater Road | Lot 4, DP 6984; Lot B, DP 379308 | Local | I22 |
|--|------------------------|--|-------|-----|

| | | | | |
|------------------------|------------------------|---------------------|-------|-----|
| Former Westpac Bank | 1121 Pittwater Road | Lot 1, DP 528546 | Local | I23 |
|------------------------|------------------------|---------------------|-------|-----|

This Heritage Impact Statement has been prepared in accordance with the standard guidelines of the NSW Heritage Office.

Heritage Considerations

The following aspects of the proposal respect or enhance the heritage significance of the adjacent buildings for the following reasons:

- The modified development will have no physical impact on the items within vicinity of the site given the spatial separation maintained and the developments location at the rear/service area of the adjacent heritage listed Cinema. In this regard the proposal will have a neutral impact on their significance.
- The modified building will contribute positively to the streetscape character and design quality of development located within the sites visual catchment.

The following aspects of the proposal could detrimentally impact on heritage significance.

- Nil

The following sympathetic solutions have been considered and discounted for the following reasons:

- Nil

Having given consideration to the impact of the proposed works on the significance of the adjacent heritage items I have formed the considered opinion that:

- The modified development will have no physical impact on the items within vicinity of the site given the significant spatial separation maintained and to that extent will have a neutral impact on their significance.
- The modified building will contribute positively to the streetscape character and design quality of development located within the sites visual catchment.
- Accordingly, the proposed development, as modified, will have a neutral impact on the significance of the heritage items within the vicinity of the site.

Accordingly, there is no statutory impediment to the granting of consent to the proposed works in this instance.

Flood planning

The acceptability of the proposal having regard to the flooding affectation across the site is addressed in the accompanying Overland Flow Assessment Report prepared by Woolacotts Consulting Engineers. The proposal will remain safe from flooding Hazard.

Acid Sulfate Soils

The site is mapped Acid Sulphate Soil Class 4. Geotechnical Investigation Report prepared by Alliance Geotechnical Pty Limited in support of the original application did not identify the presence of acid sulfate soils.

Earthworks

In accordance with the clause 6.2 WLEP 2011 the application is accompanied by a Geotechnical Addendum Report prepared by Alliance Geotechnical Pty Limited which assessed the acceptability of the earthworks proposed. Such report contains a number of recommendations which are to be complied with through the construction process and no objection is raised to an appropriately worded condition in this regard.

Development on sloping land

Pursuant to clause 6.4 WLEP the site is mapped as falling within Land Slip Risk Areas A and D. A geotechnical Addendum report prepared by Alliance Geotechnical Pty Limited accompanies the application with the report confirming that the recommendations and conclusions contained within the original geotechnical report remain valid having regard to the modification sought.

7.0 Warringah Development Control Plan 2011

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

- The siting, scale, form and massing of the development is not materially altered with the modified proposal maintaining the previously approved building height, setbacks and spatial relationship with adjoining development,
- The modified proposal will not give rise to any adverse public or private view affectation,
- The development, as modified, continues to provide appropriately for off-street car parking and is able to be appropriately drained,
- The modified proposal does not compromise the residential amenity outcomes afforded to adjoining development through approval of the original application in relation to views, solar access and privacy.
In this regard, we rely on the sections on plans DA300 and DA301 to demonstrate that appropriate privacy attenuation measures have been incorporated into the proposal to ensure the maintenance of appropriate visual privacy between adjoining development.
- The development, as modified, provides appropriately for waste management.

8.0 State Environmental Planning Policy (Resilience and Hazards) 2021

The approved developments performance when assessed against of the provisions of the now repealed State Environmental Planning Policy (Coastal Management) 2018 and State Environmental Planning Policy No. 55 – Remediation of Land, which have both been replaced by State Environmental Planning Policy (Resilience and Hazards) 2021, are not compromised as consequence of the modifications sought.

9.0 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.

10.0 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 continues to respond positively to the applicable statutory planning regime with the urban design, streetscape, heritage conservation, residential amenity, landscape, flooding and drainage outcomes afforded through approval of the original application not compromised.

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?*

The development continues to provide appropriately for off-street car parking.

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 are generally contained within the approved building envelope such that the 3 dimensional form, streetscape appearance and landscape outcomes as approved are not compromised as consequence of the modifications sought. Importantly, the spatial relationship of the proposal to adjoining development is maintained together with a complimentary and compatible streetscape presentation and appropriate residential amenity outcomes including privacy, solar access and view sharing.

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 development, as modified, will comply with the provisions of the Building Code of Australia as detailed within the accompanying BCA Compliance Statement prepared by BM+G.

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 and 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 and the Court approval.

8.0 Conclusion

the modifications provide for a refinement in the architectural, landscape, stormwater and flood management detailing of the approved development to enhance internal layout efficiency, serviceability and constructibility. Such modifications include a minor increase in overall building height to facilitate the provision of required services, the provision of 2 plunge pools at the rear of the site and the removal of the flood gate from the driveway based on the findings of further flood modelling.

The modifications are generally contained within the approved building envelope such that the 3 dimensional form, streetscape appearance and landscape outcomes as approved are not compromised as consequence of the modifications sought. Importantly, the spatial relationship of the proposal to adjoining development is maintained together with a complimentary and compatible streetscape presentation and appropriate residential amenity outcomes including privacy, solar access and view sharing.

To that extent Council can be satisfied that the modifications involve minimal environmental impact and 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) and 4.55(8) 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 LIMITED



Greg Boston

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Director