

**STATEMENT OF MODIFICATION - APPLICATION TO MODIFY CONSENT UNDER
S4.56 OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979**

DEMOLITION WORKS AND CONSTRUCTION OF A SENIORS HOUSING DEVELOPMENT

LOCATED AT

1955 PITTWATER ROAD, BAYVIEW

FOR

CAP ONE DEVELOPMENTS PTY LTD



**Prepared
May 2024
(As revised June 2024)**

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1.0 Introduction

This Statement of Modification has been prepared to assist Council in the consideration of an application pursuant to Section 4.56 of the Environmental Planning & Assessment Act 1979 (**EP&A Act**) to modify Development Consent DA2019/0154 (as modified), which approved demolition works and construction of a seniors housing development at **1955 Pittwater Road, Bayview**.

The proposed modifications are detailed in the accompanying architectural plans prepared by A Plus Design Group, Project No A22039, variously revised and dated 24 June 2024, which have been updated to implement design revisions suggested by the Access Consultant and comprise:

Drawing No.		Revision
DA.100	Drawing List	H
DA.101	Site Plan	G
DA.203	Lower Ground Floor Plan	H
DA.204	Ground Floor Plan	D
DA.205	First Floor Plan	E
DA.301	Section AA	F
DA.302	Section BB	F
DA.303	Section CC	B
DA.401	North Elevation	F
DA.402	West Elevation	H
DA.403	South Elevation	E
DA.404	East Elevation	H
DA.405	UNIT 1 Internal Elevations/Sections	B
DA.701	GFA Diagram	D
DA.702	GFA Comparison Diagram	A
DA.903	Lower Ground Comparison Plan	C
DA.905	First Floor Comparison Plan	B
DA.1103	Lower Ground GFA Comparison Diagram	B
DA.1105	First Floor GFA Comparison Diagram	B

The proposed modifications are discussed in further detail in this submission.

2.0 Background

Development Application DA2019/0154 for *“Demolition works and construction of a seniors housing development”* was approved in accordance with the Land and Environment Court Judgement dated 16 October 2019 (subsequently modified under Mod2021/0101 dated 12 May 2021, Mod2021/0343 dated 27 July 2021 and Mod2022/0471 dated 13 September 2023). The approved modifications included the relocation of piling and retaining walls and the utilisation of the created void areas for non-habitable storage purposes.

Three Construction Certificates – CC2021/0122 dated 1 February 2021, CC2021/0299 dated 15 March 2021 and CC2024/0094 dated 31 January 2024 were issued, with Notice of Commencement NOC2021/0193 lodged with Council on 5 February 2021 and NOC2024/0146 lodged with Council on 2 February 2024.

The works were commenced and the existing structures within the site have been demolished.

In accordance with Northern Beaches Council's correspondence dated 4 June 2024, detailing issues raised in the assessment of Mod2024.0252, this revised assessment considers the provisions of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

3.0 Proposed Modifications

The application involves changes to the form of the approved development, which are detailed in the modified architectural plans prepared by A Plus Design Group, dated 19 April 2024.

The proposed modification seek to undertake internal reconfiguration to Unit 1 and Unit 4 to enhance the amenity of the dwellings, and overall design quality of the development.

The proposed works do not see any change the external configuration of the building nor do they result in any change to the building height, setbacks or its contribution to the streetscape with the integrated landscape regime ensuring that the development will sit within a landscaped setting.

Importantly, the previously approved landscaping, drainage design and neighbouring amenity outcomes afforded through approval of the original application including visual privacy, solar access and view sharing are not compromised.

Specifically, the proposed modifications include:

Lower Ground Floor: Reconfiguration of Unit 1 to create a new bedroom, WIR and ensuite in the existing storage area, along with a new bathroom and laundry area. The reconfiguration results in a new window servicing the new laundry, however this window is orientated inwards to the terrace area, not towards any site boundary.

Ground Floor: Glazing adjustment on Unit 2 terrace area between the terrace and void area.

First Floor: Reconfiguration of Unit 4 to create a larger bathroom and relocate the laundry to the void area.

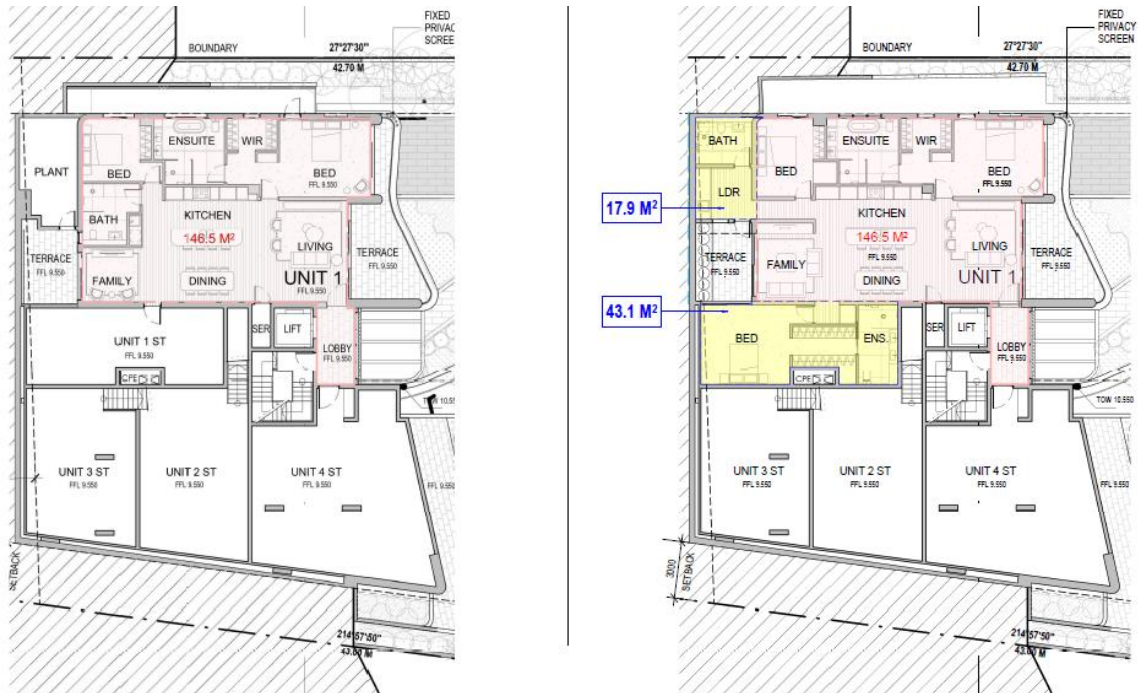
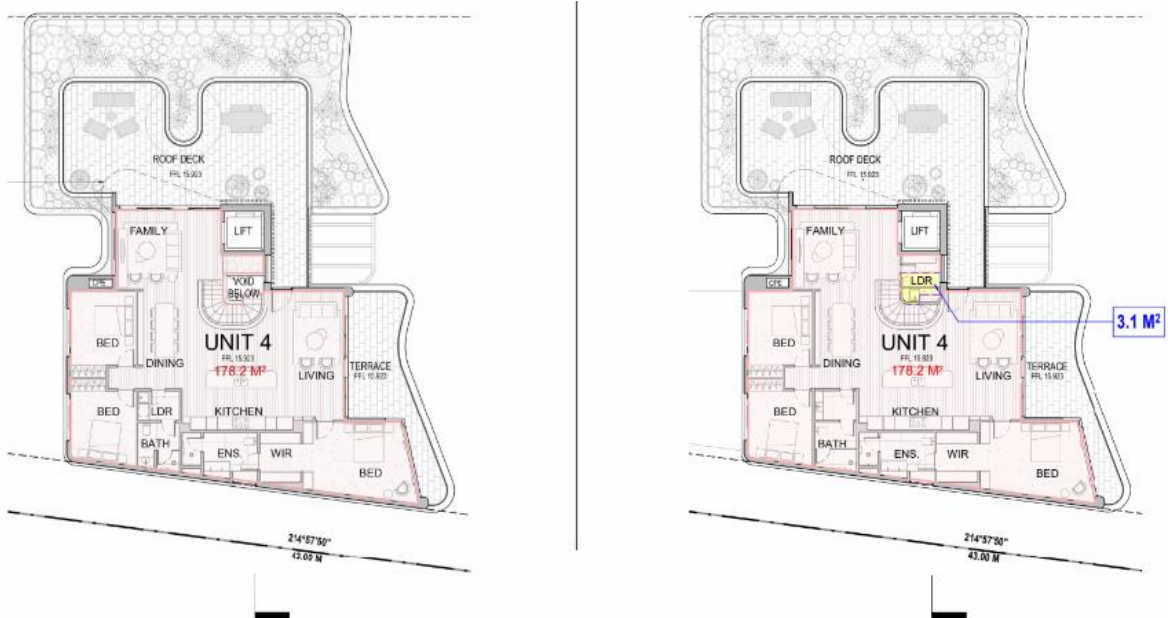


Figure 1: Unit 1 approved and modified floor layout



APPROVED

CURRENT PROPOSAL

Figure 2: Unit 4 approved and modified floor layout

The reconfiguration of Unit 1 and Unit 4 to create a new bedroom and laundry area are a logical location being the rooms are located in the approved storage and void areas with such location ensuring that

there are no adverse streetscape or residential amenity impacts noting that the area in Unit 1 of the development was always trafficable as nominated on the approved plans.

The modifications are contained within the approved building envelope such that the streetscape appearance, car parking, drainage and landscape outcomes as approved are not compromised.

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.

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 4.56 (1A5(2) of the Act.

The development indices for the site remain consistent with that originally approved, as noted as:

Compliance Table				
Control	Standard	Approved	Proposed	Compliance
Zone	R2 Low Density Residential		The proposed retains the approved land use for construction of a seniors housing development which remains consistent with the objectives of the zone.	Complies
Building Height	8.5m (LEP)		No change	Complies
FSR	(SEPP)	0.495:1 or 641.8m ²	0.544:1 or 705.9m ² (additional 64.1m ²)	Complies – on merit
Front building line	10m	12.8m	No Change	Complies
Setbacks				
Rear	3m	Carpark: 5.5m – 6.5m Lower ground: 5.6m – 8.8m GF: 8.8m – 10.75m FF: 8.9m – 10.7m	No Change	Complies
Side	NW – 3.825m SE – 3.875m	NW – 3m SE – 2.7m		
Landscape Open Space	50% (648.25m ²)	52% or 675.6m ²	No change	Complies

4.0 Zoning and Development Controls

4.1 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

Background

The original application was assessed under the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (the SEPP) came into effect on 31 March 2004 and replaced the previous State Environmental Planning Policy (SEPP) No. 5 – Housing for Older People or People with a Disability.

However, in November 2021, the planning provisions for seniors housing were transferred from the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP) (now repealed), to the State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

As per Schedule 7A Savings and transitional provisions, clause 2(1)(da) of *State Environmental Planning Policy (Housing) 2021* states the following:

(1) This Policy does not apply to the following matters—

(da) an application to modify a development consent granted after the commencement date, if it relates to a development application made, but not determined, on or before the commencement date,

Accordingly, an assessment of the proposed modification application has been prepared against the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* for Council's consideration.

The aim of this policy is to:

- (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.*

The SEPP allows for the provision of this form of housing on land zoned for urban purposes. The subject land is zoned R2 Low Density Residential under the Pittwater Local Environmental Plan 2014 and the modified proposal continued provide for the approved housing which is consistent with the aim of the Policy and permissible within the site with the consent of the Council.

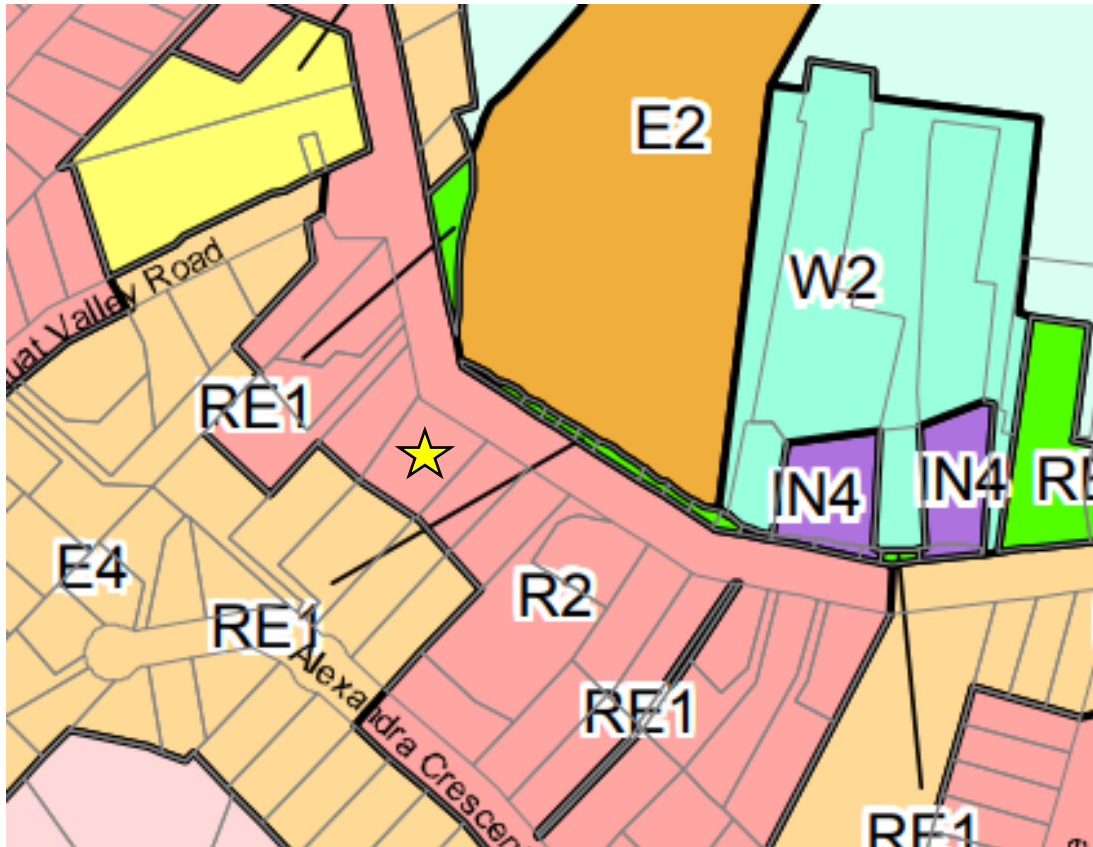


Fig 2: Extract of Pittwater Local Environmental Plan 2014 Zoning Map

The subject application proposes development of the subject site for a purpose defined under the SEPP as being 'self-contained dwellings'. A 'self-contained dwelling' is defined as;

a dwelling or part of a building (other than a hostel), whether attached to another dwelling or not, housing seniors or people with a disability, where private facilities for significant cooking, sleeping and washing are included in the dwelling or part of the building, but where clothes washing are included in the dwelling or part of the building, but where clothes washing facilities or other facilities for use in connection with the dwelling or part of the building may be provided on a shared basis.

The subject modification application will maintain the approved four (4) self-contained dwellings which satisfy this definition.

In support of the proposal it is submitted that the majority of older people are similar to the community at large and generally have no immediate need for support services on-site, being able to seek external support services when needed. For this reason developments such as the proposal do not require the provision of on-site services, instead the policy requires that they be located within easy access to the types of support services and facilities required by older or disabled persons.

The site is located within approximately 140m of the nearest bus stop on Pittwater Road, serviced by regular buses to Mona Vale.

Part 2 – Site Related Requirements

Clause 26 - Location and Access to Facilities

Clause 26(1) provides that Council must be satisfied by written evidence that residents of the proposed development will have access (in accordance with subclause 2) to:

- "a. shops, banks and other retail and commercial services that residents may reasonably require, and*
- b. community services and recreation facilities, and*
- c. the practice of a general medical practitioner."*

In this regard the SEPP defines "access" at Clause 26(2).

The modifications to the approved development will continue to maintain the site's attributes that it complies with the requirements of this Clause as detailed below.

The subject site is 1.9km from Mona Vale Commercial Centre, which contains shops, banks and a medical centre. As discussed in the original Traffic Impact Statement prepared by Traffix Traffic and Transport Planners which accompanied the original application, the site is well served by local public transport links, comprising:

Pittwater Road:-

Route 156 – McCarrs Creek to Mona Vale

It is understood that the gradients and pathways of the routes accessing the bus stops will comply with the requirements of Clause 26(2)(a) of the SEPP as level convenient access is provided to and from the site.

As the proposed locations are internal works which do not alter the approved access provisions to the external parts of the site, it is submitted that the proposed development and the nominated access to public transport satisfy the requirements of the SEPP.

The proposal is therefore considered to satisfy the requirements of Clause 26 of the SEPP.

Clause 27 – Bushfire Prone Land

The subject site is not identified as comprising bushfire prone land on Council's Bushfire Prone Land Map.

Therefore, the provisions of Planning for Bushfire Protection do not apply to the subject application.

Clause 28 – Water & Sewer

Water and sewer would remain available to the site and provided in accordance with the requirements of the original determination.

Part 3 – Design Requirements

Clause 30 - Site Analysis

Clause 30 provides as follows;

- (1) *A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the applicant has taken into account a site analysis prepared by the applicant in accordance with this clause.*
- (2) *A site analysis must;*
 - (a) *contain information, where appropriate, about the site and its surrounds as described in subclauses (3) and (4), and*
 - (b) *be accompanied by a written statement (supported by plans including drawings of section and elevations, and in the case of the proposed development on land adjoining land zoned primarily for urban purposes, and aerial photograph of the site):*
 - (i) *explaining how the design of the proposed development has regard to the site analysis, and*
 - (ii) *explaining how the design of the proposed development has regard to the design principles set out in Division 2.*

A detailed Site Analysis Plan was prepared with the original determination and the fundamental design as originally approved remains unchanged in terms of the buildings external configuration and its relationship to the neighbouring sites. The works that are the subject of this application are wholly internal and do not alter the external configurations of the approved development which is under construction.

It is considered that the original documents prepared for the initial determination of approval for the development be read in conjunction with this Statement of Environmental Effects and the supporting consultant reports satisfy the requirements of Clause 30 of the SEPP.

Clause 31 - Design of In-fill Self Care Housing

In determining a development application made pursuant to this Chapter to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration) the provisions of the *Seniors Living Policy: Urban Design Guideline for Infill Development* published by the Department of Infrastructure, Planning and Natural Resources in March 2004.

In response to this requirement it is advised that the minor works detailed in this modified proposal, which do not have any significant change to the external configuration of the building or its height and function have been designed having regard to these Guidelines and it is considered that the proposal achieves an appropriate level of compliance with its requirements and is of a good design.

An assessment of the modified proposal under the Urban Design Guideline is provided as an Appendix.

Clause 32 - Design of Residential Development

Clause 32 of the SEPP requires that consent must not be granted unless Council is satisfied that adequate regard has been given to the following design principles:

Clause 33 - Neighbourhood amenity and streetscape

The modified proposal has been designed so as to have minimal impact upon the neighbourhood amenity & streetscape of the locality. In this regard, the works which other subject of this proposal are wholly internal and do not alter the relationship of the building to the streetscape or to the neighbouring properties.

The approved building footprint, height and setbacks to the side boundaries and extent of landscaping within the site will be unchanged.

In our view the proposal will continue to result in dwellings that will be of a form and scale compatible with the existing character of this location.

Clause 34 - Visual and acoustic privacy

The modified development which proposes internal alterations to the approved design has been designed to maintain the visual and acoustic privacy of both the future residents of the development together with the adjoining property owners. This has primarily been achieved through the retention of the approved setbacks to the side and rear property boundaries and the considered location and design of the Minor internal reconfiguration as detailed within the submission..

Clause 35 - Solar access and design for climate

The SEPP requires that the design of the proposed development ensures adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space.

The proposed modification works will not cause any solar impact to neighbouring sites as the height and setbacks of the built form remain unchanged.

A Solar Analysis has been prepared by A Plus Design Group, Reference a22039 dated 22 April 2024, which notes that notwithstanding the southern aspect of the proposed bedroom and its associated courtyard, some solar access will be available to the area between 2PM and 3PM on June 21.

The solar analysis also confirms that on the equinox, being 21 March & 21 September, solar access to the rear courtyard and bedroom area will be extended to the period of 1PM – 3PM.

The proposed works will have no impact on the solar access enjoyed by the remainder of the development, with the northern aspect of the site allowing all dwellings to receive good solar access to the northern façade. The main living rooms and outdoor recreation space continue to receive the same solar access as anticipated within the original approval.

As the proposed bedroom and the adjacent terrace on the lower ground floor level are not primary areas of recreation or the areas, the extent of solar access is considered to be appropriate and acceptable this instance.

The new bedroom for Unit 1 will receive appropriate solar access, enhancing the amenity of the future occupants.

It is considered that the proposed development satisfies the requirements of this design element.

Clause 36 - Stormwater

The proposal also provides for the detailed management of stormwater from the site. The new works do not alter the roof area or the building's location on the site and the development will continue to rely on the approved stormwater management provisions.

Clause 37 - Crime Prevention

In accordance with the approved design, the occupants of the development will be provided with a secure living environment. The minor internal reconfiguration will not reduce the occupants opportunity to overview the property and maintain safety and security within their property and to the adjoining public domain.

Clause 38 - Accessibility

The proposal has been designed so that each unit is accessible by a wheelchair bound person via suitably graded pathways entries as detailed in the Disability Access Report prepared by Inclusive Places, Project No P000737 dated 25 June 2024 which is included as part of this submission.

The site is therefore considered to be provided with appropriate vehicular and pedestrian access and letter box facilities.

Clause 39 - Waste Management

The approved waste management provisions will remain unchanged, with waste taken to the waste bin area which is located within the basement adjacent to the proposed carpark. Waste from the site will be serviced by Council's waste contractor.

Part 4 – Development Standards

Clause 40 – Development Standards – Minimum sizes and building height

Clause 40 (1) provides that a consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this Clause.

Clause	Standard	Proposal	Compliance
Clause 40(2) – Lot Size	Minimum 1,000m ²	Site Area: 1296.5m ²	Yes - unchanged
Clause 40(3) – Site Frontage	Minimum 20m measured at the building line.	The site has a frontage of 32.64m (by survey) to Pittwater Road.	Yes - unchanged
Clause 40(4) – Height in zones where residential flat buildings are not permitted	(a) 8 metres or less (b) No more than 2 storeys adjacent to a boundary (c) Max. 1 storey in rear 25% of site	7.7m 2 storeys 1 storey in rear	(a) Yes - unchanged (b) Yes- unchanged (c) Yes - unchanged

Clause 41 - Self-contained dwellings – standards concerning access and useability

Clause 41 of the SEPP states:

- 41. A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purpose of a hostel or self-contained dwelling unless the proposed development complies with the standards specified in Schedule 3 for such development.*

A detailed assessment of the proposal against the requirements of this Division is contained within the Disability Access Report prepared by Inclusive Places, Project No P000737 dated 25 June 2024 and which is included as part of this application.

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

This clause provides additional standards for self-contained dwellings which is summarised over:

Clause	Standard	Proposal	Compliance
Clause 50(a) – Building Height	Buildings not to exceed 8.0m in height	7.7m	Yes - unchanged
Clause 50(b) – Density and Scale	Floor Space Ratio not to exceed 0.5:1	Approved – 0.495:1 or 641.8m ² Proposed - 0.544:1 or 705.9m ² (additional 64.1m ²)	Complies – on merit – see discussion

Clause	Standard	Proposal	Compliance
Clause 50(c) – Landscaped Area	30% of site area to be landscaped (388.95m ²)	570m ² or 44%	Yes - unchanged
Clause 50(d) - Deep Soil Zones	15% of the site area (194.5m ²) With two thirds (64.8m ²) at the rear	570m ² or 44% and >64.8m ² deep soil at the rear of the site	Yes - unchanged Yes- unchanged
Clause 50(e) – Solar Access	70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter	All dwellings receive minimum 3 hours solar access to internal living areas and to private open space.	Yes - unchanged
Clause 50(f) – Private Open Space	15m ² of private open space per dwelling at ground floor 10m ² in case of any other dwelling	All dwellings exceed minimum required private open space area.	Yes - unchanged
Clause 50(h) – Parking	0.5 spaces per bedroom (6 spaces required)	7 spaces provided	Yes - unchanged

Clause 50(b) Density and Scale (change in FSR)

The proposed development is considered to achieve a high quality built form and urban design outcome that is consistent with the vision for the site and the surrounding locality. Built form and design parameters for the modified development have considered the design parameters of the SEPP Seniors, PLEP 2014 and NSW Apartment Design Guide.

There is no maximum FSR for the site, under the PLEP 2014. The previous design contained storage areas and void spaces which were logically located inside the existing approved building footprint and voids within the building.

Notwithstanding the development of the storage space within the basement level at the lower ground floor level will see a technical increase in the gross floor area of the building, the works do not see any external change to the building form as perceived from either the street domain or from any of the surrounding properties.

The height, bulk and scale of the approved seniors living, as reflected by floor space, is entirely consistent with the built form characteristics established by development generally within the site's visual catchment. The change in Unit layout of Unit 1 and Unit 4 to utilise the approved storage and void area areas does not, in any significant or readily discernible manner, contribute to the bulk and scale of the development as approved. The bulk and scale of the approved dwellings remain consistent with the bulk and scale of surrounding development and development generally within the site's visual catchment and locality.

The intended outcome for the proposal is to facilitate an improved use of the land by providing for seniors housing that is consistent with the goals and vision of the NSW State Government housing policy while responding to the environmental attributes and the surrounding context.

As the proposal represents a modification to the original consent, the provisions of clause 4.6 of the Pittwater Local Environmental Plan 2014 do not apply and a formal written request under clause 4.6 to vary the standard within the SEPP Instrument is not required.

On this basis, the modified development is consistent with the requirements and has addressed the matters raised in the Housing SEPP.

Summary

The proposal is therefore considered to comply with the requirements of this SEPP.

4.2 State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity & Conservation SEPP) contains planning controls for the removal of vegetation on the land within non-rural areas of the State. The policy aims to protect the biodiversity values of trees and other vegetation in non-rural areas of the State and to preserve the amenity of nonrural areas of the State through the preservation of trees and other vegetation.

All vegetation removal for the site was approved under the previous DA by the Land and Environment Court and subsequent modifications. The development proposal as a part of this application does not seek any amendments to the tree removal or landscaping design previously approved. No further consideration of the SEPP is required.

4.3 State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP) relates to provisions for remediation of land. Clause 4.6 requires the consent authority to consider whether land is contaminated and if land can be remediated and made suitable for the proposed development prior to granting development consent to the DA.

As part of the original application consent authority was satisfied that the issue of contamination was sufficiently assessed.

The proposed works do not see any further change to the existing approved site conditions and the extent of works below ground level. On this basis, no further investigation is considered necessary to accompany the proposed additional works within Unit 1 or Unit 4.

4.4 State Environmental Planning Policy (Sustainable Buildings) 2022

The proposal continues to meet the relevant water, thermal and energy standards required by SEPP BASIX. An amended BASIX certificate has been submitted with the subject modification application.

4.5 Pittwater Local Environmental Plan 2014

Clause 2.2 Zone objectives and Land Use Table

The site is zoned R2 Low Density Residential under the provisions of the PLEP 2014. The proposed modified development remains permissible with consent and consistent with the objectives of the R2 Low Density Residential zone.



Fig 3: Extract of Zoning Map of PLEP 2014

The relevant numerical and performance based controls under PLEP are discussed below:

Clause	Control	Proposed	Compliance
4.3 – Height of Buildings	8.5m Approved: 8.3m (Roof RL 18.48)	No Change	Complies
7.1 – Acid sulfate soils	Class 5	The amended design will not result in further disturbance of acid sulfate soils.	Complies
7.3 – Flood planning	The separate parcel of land known as Lot 1 DP	No Change	Complies

	1047205 and located on the north-eastern side of Pittwater Road which is identified as part of the subject lot is identified as "Low Risk" Flood Prone Land and as being subject to Tidal Inundation.		
7.6 – Biodiversity	The land is not noted within Council's Biodiversity mapped area.	N/A	N/A
7.7 - Geotechnical Hazard	W Hazard H1	The proposal is supported by an addendum letter from Crozier Geotechnical Consultants, dated 24 April 2024 confirming the amended design is consistent with the original assessment and recommendations.	Complies
7.10 – Essential Services		Essential services will continue to be provided in accordance with the approved development.	Complies

There are no other clauses of PLEP 2014 that are considered to be relevant to the subject modification application.

4.6 Pittwater 21 Development Control Plan

Council's Pittwater 21 DCP Section B (General Controls), Section C (Development Controls) and Section D4 Church Point and Bayview Locality Statement provides a range of outcomes and controls which form the primary criteria for the control for development within the subject locality.

4.6.1 Section A – Shaping Development in Pittwater

D.4 Church Point and Bayview Locality Statement

Desired Character

The Church Point and Bayview locality will remain 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 lowlands in the locality on land that has less tree canopy coverage, species and habitat diversity and fewer other constraints to development. 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. The locality is characterised by steeply sloping blocks so the provision of facilities such as inclinators, driveways and carparking need to be sensitively designed. The shared use of vehicular/pedestrian access, and the use of rooftops as parking areas can be solutions that minimise the physical and visual impact on the escarpment or foreshore.

Future development will maintain a building 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. Views from the buildings shall be maintained below the tree canopy level capturing spectacular views up the Pittwater waterway. 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.

The locality is visually prominent particularly from Scotland Island, Bilgola Plateau, and the Pittwater waterway. Therefore, 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, 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.

Pedestrian/cycle access around the foreshore and to areas of open space will be upgraded and maintained.

Church Point will remain an important link to the offshore communities.

It is considered that the modified proposal is consistent with the desired character of the locality by continuing to provide for a new senior housing developments consistent with the low to medium density scale of the area.

The modifications sought are of minimal environmental impact given that the previously approved building height, setbacks and envelope are otherwise unaltered. The proposed floor plan reconfiguration will not be readily discernible as viewed from outside the site with the design quality of the overall development not compromised as consequence of the modifications sought.

The approved residential amenity outcomes in terms of solar access, privacy and view sharing are not compromised with the modifications both quantitatively and qualitatively of minimal environmental impact. The built form will continue to complement the existing surrounding development and the use of earthy tones will harmonise with the bushland/waterside setting of the locality.

4.6.2 Section B General Controls

The General Controls applicable to the construction or demolition of the existing structures and the construction of a senior's living housing are summarised as:

B3.1 Landslip Hazard

The controls seek to achieve the outcomes:

Protection of people. (S)

Protection of the natural environment. (En)

Protection of private and public infrastructure and assets. (S)

The site is identified as Landslip Prone on Council's Hazard Mapping. The proposal seeks demolition works and construction of a new senior housing development.

A supporting letter has been prepared by Crozier Geotechnical Consultants, dated 24 April 2024, which concludes that the proposed development, as amended, is suitable for the site. Subject to compliance with the recommendations contained within this report, the proposal will satisfy the provisions of this clause.

B3.8 Estuarine Hazard – Medium Density Residential

The controls seek to achieve the outcomes:

Protection of people. (S)

Protection of the natural environment. (En)

Protection of private and public infrastructure and assets. (S)

The separate parcel of land known as Lot 1 DP 1047205 and located on the north-eastern side of Pittwater Road which is identified as part of the subject lot is identified as “Low Risk” Flood Prone Land and as being subject to Tidal Inundation. As the works are contained within the parcel of land located on the south-western parcel of land, and wholly within the building footprint no further investigation is deemed necessary.

B3.11 Flood Prone Land

The controls seek to achieve the outcomes:

Protection of people. (S)

Protection of the natural environment. (En)

Protection of private and public infrastructure and assets. (S)

The separate parcel of land known as Lot 1 DP 1047205 and located on the north-eastern side of Pittwater Road which is identified as part of the subject lot is identified as “Low Risk” Flood Prone Land and as being subject to Tidal Inundation. As the works are contained within the parcel of land located on the south-western parcel of land, and wholly within the building footprint no further investigation is deemed necessary.

B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land

The controls seek to achieve the outcomes:

The long-term viability and enhancement of locally native flora and fauna and their habitats. (En)

There is no change to the previously approved landscape design or planting schedule for the site.

B4.15 Saltmarsh Endangered Ecological Community

The controls seek to achieve the outcomes:

To conserve and enhance saltmarsh vegetation. (En)

The works are wholly contained within the site and will not result in adverse impacts to any saltmarsh vegetation.

B4.16 Seagrass Conservation

The controls seek to achieve the outcomes:

The conservation of seagrass beds in Pittwater. (En)
The replacement of lost/damaged seagrass beds. (En)

The works are wholly contained within the site and will not result in adverse impacts to any seagrass beds.

B4.20 Protection of Estuarine Water Quality

The controls seek to achieve the outcomes:

To ensure that water quality is not adversely affected by pollutants including increased nutrient levels, pathogens, and siltation. (En)
To protect the mangroves, seagrasses, intertidal sand/mud flats and other habitats that comprise the estuarine habitat of Pittwater. (En)
Development in the catchment of estuarine habitat is to result in estuarine habitat being retained or enhanced with respect to that development. (En)
The physical, chemical and biological processes of estuarine habitats in Pittwater are improved, maintained or restored. (En)
The social and cultural values of estuarine habitats are conserved and enhanced. (S)
Biodiversity, ecological processes and other estuarine habitat values are conserved. (En)

The works are wholly contained within the site, with no change to the approved stormwater management system and will therefore not result in additional adverse impacts to any seagrass beds.

B5.7 Stormwater Management – On-Site Stormwater Detention

The controls seek to achieve the outcomes:

Rates of stormwater discharged into receiving environment maintained or reduced. (Ec, S)

There is no change to the previously approved stormwater management system onsite.

B5.9 Stormwater Management – Water Quality – Other than Low Density Residential

The controls seek to achieve the outcomes:

No increase in pollutants discharged with stormwater into the environment. (En)
Development is compatible with Water Sensitive Urban Design principles. (En)

There is no change to the previously approved stormwater management system, or water quality onsite.

B5.10 Stormwater Discharge into Public Drainage System

The controls seek to achieve the outcomes:

All new development is to have no adverse environmental impact at the discharge location. (En, S)

There is no change to the previously approved water quantity or stormwater management system for the site.

B6.1 Access Driveways and Works on the Public Road Reserve

This control seeks to achieve the outcomes:

Safe and convenient access. (S)

Adverse visual impact of driveways is reduced. (En)

Pedestrian safety. (S)

An effective road drainage system. (En, S)

Maximise the retention of trees and native vegetation in the road reserve. (En, S)

The modified design makes no change to the existing driveway from Pittwater Road.

B6.3 Off-Street Vehicle Parking Requirements

This control seeks to achieve the outcome:

An adequate number of parking and service spaces that meets the demands generated by the development.

Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety. Safe and convenient parking. (S)

There is no change to the existing approved parking. Eight car parking spaces and one visitor space within the carpark level will continue to be provided.

B8.1 Construction & Demolition – Excavation and Landfill

The controls seek to achieve the outcomes:

Site disturbance is minimised. (En)

Excavation and construction not to have an adverse impact. (En)

Excavation operations not to cause damage on the development or adjoining property. (S)

There is no change to the approved excavation area or depth on the site. All works will be carried out under the supervision of the consulting Structural and Geotechnical Engineers.

B8.2 Construction & Demolition – Erosion and Sediment Management

The controls seek to achieve the outcomes:

Waterways, coastal areas, watercourses, drainage systems and the public domain are protected from the transportation of sedimentation from development sites.

(En)

Reduction of waste throughout all phases of development. (En)

Public safety is ensured. (S)

Protection of the public domain. (S, En)

The amended proposal will not result in additional erosion and sediment management beyond what was approved under the DA. Appropriate measures will be taken to ensure safe and efficient removal of waste will be carried out throughout all phases of development.

4.6.3 Section C Development Type Controls

The Development Controls applicable to the proposed modified development are summarised as:

C1.1 Landscaping

The controls seek to achieve the outcome:

A built form softened and complemented by landscaping. (En)

Landscaping reflects the scale and form of development. (En)

Retention of canopy trees by encouraging the use of pier and beam footings. (En)

Development results in retention of existing native vegetation. (En)

Landscaping results in the long-term retention of Pittwater's locally native tree canopy. (En)

Landscaping retains and enhances Pittwater's biodiversity by using locally native plant species (En)

Landscaping enhances habitat and amenity value. (En, S)

Landscaping results in reduced risk of landslip. (En, Ec)

Landscaping results in low watering requirement. (En)

There is no change to the previously approved landscaping plans, species selection or plant numbers for the site.

C1.2 Safety and Security

The controls seek to achieve the outcomes:

On-going safety and security of the Pittwater community. (S)

Opportunities for vandalism are minimised. (S, Ec)

Inform applicants of Council's requirements for crime and safety management for new development. (S)

Improve community awareness in relation to Crime Prevention through Environmental Design (CPTED), its principle strategies and legislative requirements (S)

Identify crime and safety priority areas in Pittwater LGA (S, Ec)

Improve community safety and reduce the fear of crime in the Pittwater LGA (S)

Develop and sustain partnerships with key stakeholders in the local area who are involved in community safety. (S)

The proposed works will continue to provide suitable safety and security for the site. Casual surveillance of the driveway entry area will continue to be available from each Unit.

C1.3 View Sharing

The controls seek to achieve the outcomes:

A reasonable sharing of views amongst dwellings. (S)

Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced. (S)

Canopy trees take priority over views. (En, S)

The additional floor area will not give rise to public or private view affect noting that the previous storage and void areas are contained wholly within the building footprint, meaning there is no change to the bulk or scale of the built form or additional protrusion into the existing view lines.

C1.4 Solar Access

The controls seek to achieve the outcomes:

Residential development is sited and designed to maximise solar access during mid-winter. (En)

A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)

Reduce usage and/dependence for artificial lighting. (En)

The required controls to achieve the outcomes are to ensure that private open spaces of the subject and adjoining dwellings maintain a minimum of 3 hours of solar access in mid-winter.

The proposal, as amended, is accompanied by shadow diagrams which demonstrate that the proposal will not result in any additional overshadowing to neighbouring properties and also retain adequate solar access to Unit 1 bedroom and all unit's private open spaces.

C1.5 Visual Privacy

The controls seek to achieve the outcomes:

Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design. (S)

A sense of territory and safety is provided for residents. (S)

The proposal includes one new window opening servicing the new bedroom for Unit 1. This window opening is orientated inward to the associated terrace area, meaning there is no additional privacy impact to any surrounding site.

Privacy impacts are also sufficiently maintained for the occupants of the site.

Accordingly, the proposal is considered to maintain privacy for occupants of the subject site and neighbouring properties.

C1.6 Acoustic Privacy

The controls seek to achieve the outcomes:

Noise is substantially contained within each dwelling and noise from any communal or recreation areas are limited. (S)

Noise is not to be offensive as defined by the Protection of the Environment Operations Act 1997, including noise from plant, equipment and communal or recreation areas (S)

The required controls to achieve the outcomes are to ensure that noise sensitive living areas and bedrooms are located away from major noise sources.

Given the residential nature of the works, and location of the new bedroom for Unit 1 it is considered that there will not be any impact on the surrounding locality in terms of acoustic privacy.

C1.7 Private Open Space

The controls seek to achieve the outcomes:

Dwellings are provided with a private, usable and well-located area of private open space for the use and enjoyment of the occupants. (S)

Private open space is integrated with, and directly accessible from, the living areas of dwellings. (S)

Private open space receives sufficient solar access and privacy (En, S).

The required controls to achieve the outcomes are to ensure that dwellings are provided suitable private open space with an area and at a grade which will facilitate outdoor private recreation.

There is no change to the previously approved private open space areas.

C1.9 Adaptable Housing and Accessibility

The controls seek to achieve the outcomes:

The community's lifecycle housing needs are met within Pittwater through well designed adaptable housing. (S)

All members of the community enjoy equitable access to buildings to which the general public have access. (S)

Housing for older people and people with a disability are accessible, adaptable and safe. (S)
Equitable access in the public domain. (S)

There is no change to the previously approved adaptable design within the car parking areas or

residential units.

C1.12 Waste and Recycling Facilities

The controls seek to achieve the outcomes:

Waste facilities are accessible and convenient, and integrate with the development. (En)

Waste facilities are located such that they do not adversely impact upon amenity of the land adjoining development or natural environment. (En, S)

The required controls to achieve the outcomes are to ensure that adequate area remains for the storage of waste and recyclable materials.

The approved communal bin room located on the carpark level will continue to provide adequate area for the on-site storage of waste and recyclables, with the waste removed by Council contractors via the household garbage service.

4.6.4 Section D Design Criteria

The **D4 Church Point and Bayview Locality Statement** contains a number of outcomes for development. The proposal has been assessed in regard to the Locality Statement and is summarised in the following table.

In support of the proposal, it is considered that this proposal is well designed, comprehensive and consistent with the community's vision for development in Pittwater in that it is:

- Proposing a modified development which is compatible with the existing character of the area by maintaining an appropriate development scale which is compatible with the vicinity.
- The modified proposal maintains existing views and amenity to adjoining properties.
- The modified development will not place any significant demands on local infrastructure or on the sewage disposal system for the site.

A summary of the DCP controls for the **D4 Church Point and Bayview Locality** is provided below:

D4.1 Character as Viewed From a Public Place

The control seeks to achieve the outcomes:

To achieve the desired future character of the Locality.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment. (En, S, Ec)

To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment.

The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)

High quality buildings designed and built for the natural context and any natural hazards. (En, S)

Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum. (S)

To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.

To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.

To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land. (En, S)

The required controls to achieve the outcomes are to ensure that the building maintains a compatibility with the locality through appropriate design relief including roof forms textures, materials, the arrangement of windows modulation, spatial separation, landscaping etc.

The elevations provided with the DA submission demonstrate that the modified seniors living will be complementary in terms of bulk and scale to the existing surrounding development.

D4.2 Scenic protection - General

The controls seek to achieve the outcomes:

*Achieve the desired future character of the Locality.
Bushland landscape is the predominant feature of Pittwater with the built form being the secondary component of the visual catchment. (En, S)*

It is considered that the modified development is appropriate as the proposal will make no change to the previously approved colours and finishes comprising recessive tones which are compatible with the DCP and the surrounding properties.

D4.3 Building Colours, Materials and Construction

The controls seek to achieve the outcomes:

*Achieve the desired future character of the Locality.
The development enhances the visual quality and identity of the streetscape. (S)
To provide attractive building facades which establish identity and contribute to the streetscape.
To ensure building colours and materials compliments and enhances the visual character its location with the natural landscapes of Pittwater.
The colours and materials of the development harmonise with the natural environment. (En, S)
The visual prominence of the development is minimised. (S)
Damage to existing native vegetation and habitat is minimised. (En)*

There is no change to the previously approved selection of colours and finishes which are recessive tones and are compatible with the DCP, the existing dwelling and surrounding properties.

D4.5 Front Building Line

The controls seek to achieve the outcomes:

*Achieve the desired future character of the Locality. (S)
Equitable preservation of views and vistas to and/or from public/private places. (S)
The amenity of residential development adjoining a main road is maintained. (S)
Vegetation is retained and enhanced to visually reduce the built form. (En)
Vehicle manoeuvring in a forward direction is facilitated. (S)
To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.
To encourage attractive street frontages and improve pedestrian amenity.
To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment*

There is no change to the previously approved front setback.

D4.6 Side and rear building line

The controls seek to achieve the outcomes:

- To achieve the desired future character of the Locality. (S)*
- The bulk and scale of the built form is minimised. (En, S)*
- Equitable preservation of views and vistas to and/or from public/private places. (S)*
- To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*
- To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)*
- Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)*
- Flexibility in the siting of buildings and access. (En, S)*
- Vegetation is retained and enhanced to visually reduce the built form. (En)*
- To ensure a landscaped buffer between commercial and residential zones is established.*

For residential flat buildings and multi dwelling housing:

Where the wall height is 3 metres or less, the minimum side and rear boundary setback shall be 3 metres.

Where the wall height is more than 3 metres above ground level (existing), the minimum distance from any point on the external wall of the building and a side or rear boundary shall not be less than the distance calculated in accordance with the following:

$$S = 3 + \frac{H - 2}{4}$$

where

S = the distance in metres

H = the height of the wall at that point measured in metres above existing ground level

There is no change to the previously approved side or rear setbacks.

D4.8 Building Envelope

The controls seek to achieve the outcomes:

- To achieve the desired future character of the Locality. (S)*
- To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*
- To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*
- The bulk and scale of the built form is minimised. (En, S)*
- Equitable preservation of views and vistas to and/or from public/private places. (S)*
- To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)*
- Vegetation is retained and enhanced to visually reduce the built form. (En)*

There is no change to the previously approved building envelope.

D4.9 Landscaped Area – General

The controls seek to achieve the outcomes:

Achieve the desired future character of the Locality. (S)
The bulk and scale of the built form is minimised. (En, S)
A reasonable level of amenity and solar access is provided and maintained. (En, S)
Vegetation is retained and enhanced to visually reduce the built form. (En)
Conservation of natural vegetation and biodiversity. (En)
Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels. (En)
To preserve and enhance the rural and bushland character of the area. (En, S)
Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management. (En, S)

There is no change to the existing approved landscape area, plants or species types.

D4.13 Construction, retaining walls, terracing and undercroft areas

The controls seek to achieve the outcomes:

To achieve the desired future character of the Locality.
To protect and minimise disturbance to natural landforms.
To encourage building design to respond sensitively to natural topography.

The modified proposal will continue to satisfactorily responds to the topography of the site. The works will be carried out in accordance with the directions of the consulting Structural and Geotechnical Engineers.

D4.14 Scenic Protection Category One Areas

The controls seek to achieve the outcomes:

To achieve the desired future character of the Locality.
To preserve and enhance the visual significance of district and local views of Pittwater's natural topographical features such as, ridges, upper slopes and the waterfront. (En, S).
Maintenance and enhancement of the tree canopy. (En, S)
Colours and materials recede into a well vegetated natural environment. (En, S)
To maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with built form being a secondary component. (En, S)
To preserve and enhance district and local views which reinforce and protect the Pittwater's bushland landscape and urban form to enhance legibility.
To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.
To ensure sites are designed in scale with Pittwater's bushland setting and encourages visual integration and connectivity to natural environment.
Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.

The required controls to achieve the outcomes are to ensure that the development shall minimise any visual impact on the natural environment when viewed from any waterway, road, or public reserve.

As discussed, the modified proposal will not see any substantial to the bulk and scale of the approved development.

The new works are considered appropriate and can be seen to meet the objectives of this control.

5.0 Matters for Consideration under Section 4.15 of The Environmental Planning and Assessment Act, 1979

5.1 The provisions of any environmental planning instrument

The Environmental Planning & Assessment Act 1979 provides for the modification of a consent under S4.56 and notes:

(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 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 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, 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*
- (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 dress known to the consent authority of the object 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.*

Accordingly, for the Council to approve the s4.56 Modification Application, the Council must be 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.

Legal Tests

To assist in the consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the *Moto Projects (No 2) Pty Ltd v North Sydney Council* (1999) 106 LGERA 289 (**Moto**) where His Honours states:

[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.

[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the

comparison must be a finding that the modified development is “essentially or materially” the same as the (currently) approved development.

[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

In my opinion, in terms of both a qualitative and quantitative comparison, the modified development remains substantially the same as that which was approved by DA2019/0154.

The modifications seek to improve the amenity for the occupants of the site, whilst minimising the impact of the development on the streetscape and adjoining properties. The proposed modifications do not alter the description of the development, the characterisation of the development, or any aspect of the proposal that was fundamental to the issuance of the original consent.

The proposed changes are wholly internal in that there is no change the visual appearance of the building when viewed from any of the surrounding neighbouring properties or from the adjacent street domain.

The revised design does not introduce any significant issues for the neighbouring properties in terms of view loss, privacy or solar access.

Consistent with the decision in the matter of *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) 43 NSWLR 468, as adopted by Justice Pepper in the matter of *Agricultural Equity Investments Pty Ltd v Westlime Pty Ltd (No 3)* [2015] NSWLEC 75, the modification power is beneficial and facultative. Further, consistent with the decision of Commissioner Smithson in *Aveo North Shore Retirement Villages Pty Ltd v Northern Beaches Council* [2020] NSWLEC 1035, the beneficial effects of the modification are important not only in an assessment of the impacts under s 4.15 of the EPA Act but also in considering the qualitative assessment.

In my view, this application is substantially the same as the original application when considered in the context of the Bignold J determination in Moto.

5.2 Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

There are no draft instruments applying to the land.

5.3 Any development control plan

The development has been designed to comply with the requirements of Council’s Pittwater 21 Development Control Plan.

The application has been prepared having regard to the requirements of Section B, Section C and Section D of the Pittwater 21 DCP.

5.4 Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

No matters of relevance are raised in regard to the proposed development.

5.5 Any matter prescribed by the regulations that apply to the land to which the development relates.

No matters of relevance are raised in regard to the proposed development.

5.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

The proposed modifications will not result in any unreasonable impacts upon the natural or built environment, or the amenity of adjoining properties, beyond that which is reasonably anticipated under the provisions of PLEP 2014 and P21 DCP.

5.7 The suitability of the site for the development

The subject land is currently R2 Low Density under the provisions of PLEP 2014 and is considered suitable for the proposed development.

The subject site does not pose any significant constraint to the proposed development, noting that all hazards/affectations are appropriately managed.

5.8 Submissions made in accordance with this Act or the regulations

This is a matter for Council in the consideration of this proposal.

5.9 The public interest

The proposal will not impact upon the environment, the character of the locality or upon the amenity of adjoining properties and is therefore considered to be within the public interest.

6.0 Conclusion

The test established in Moto requires both a quantitative and a qualitative assessment.

In terms of the quantitative extent of the changes to the originally approved development, the modifications are contained within the approved building envelope such that the 3-dimensional form, streetscape appearance, car parking, drainage and landscape outcomes as approved are not compromised. 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.

The proposal also satisfies the qualitative assessment required by the Moto test. The modifications will result in a development which remains generally the same as that approved, for the same purpose and with no significant or adverse changes to the physical appearance of the approved development.

Consistent with the Court decision in Moto, Council can be satisfied that the development as modified will remain essentially or materially the same as the approved development, consistent with the provisions of section 4.56 of the EP&A Act.

Council's support of the proposed modifications is sought in this instance. Please contact me on 9999 4922 or 0412 448 088 should you wish to discuss these proposed amendments.

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Town Planner

Grad. Dip. Urban and Regional Planning (UNE)

APPENDIX 1 - DESIGN REVIEW UNDER SENIORS LIVING POLICY - URBAN DESIGN GUIDELINES FOR INFILL DEVELOPMENT

SENIORS LIVING POLICY

Urban Design Guidelines for infill development

The following assessment considers the modified proposal against the NSW Governments' Urban Design Guidelines and the assessment originally prepared for the determination of DA2019/0154.

As the works which are the subject of this application are wholly internal, comprising minor rear internal reconfiguration without any change to the building site, location on-site, setbacks or its relationship with neighbouring properties, the proposed modifications are considered to be consistent with the original assessment of the Urban Design Guidelines.

1. RESPONDING TO CONTEXT

The modified proposal will continue to seek consent for a two storey multi dwelling development within the Bayview locality, within an area that is zoned R2 Low Density Residential under the Pittwater Local Environmental Plan 2014.

The local context is characterised by a predominantly one – three storey residential scale dwellings with a mix of single and medium density uses in the form of Seniors Living development.

The modified development will maintain a compatible height and scale to the other medium density uses in the vicinity, with a streetscape appearance which reflects the single residential form and rhythm facing Pittwater Road.

The lot has a general slope towards Pittwater Road and will provide for functional driveway access with generous landscaped area surrounding the development.

The area is conveniently located to the Pittwater waterway and the nearby low scale commercial uses including restaurants and cafes', with bus services to the Mona Vale Shopping and Commercial Precincts. The area is recognised by Council in its R2 Low Density Residential zoning as having been identified for range of low density housing opportunities.

2. SITE PLANNING AND DESIGN

Design principles and better practice

General

- *Site design should be driven by the need to optimise internal amenity and minimise impacts on neighbours. These requirements should dictate the maximum development yield.*
- *Cater for the broad range of needs from potential residents by providing a mix of dwelling sizes and dwellings both with and without assigned parking. This can also provide variety in massing and scale of built form within the development.*

Built form:

- *Locate the bulk of development towards the front of the site to maximise the number of dwellings with frontage to a public street*
- *Parts of the development towards the rear of the site should be more modest in scale to limit the impact on adjoining properties*
- *Design and orient dwellings to respond to environmental conditions:*
- *orient dwellings on the site to maximise solar access to living areas and private open space (see figure 2)*
- *Locate dwellings to buffer quiet areas within the development from noise*

Comment

This application proposes minor works comprising the internal reconfiguration of an approved development containing four dwellings in a one -two storey style built form and with driveway access to the under building parking.

The dwellings have the opportunity to overlook either the primary frontage to Pittwater Road and the driveway and pedestrian access.

All dwellings enjoy a north-easterly- north-westerly aspect and will have excellent access to sunlight throughout the day.

Trees, landscaping and deep soil zones;

Maintain existing patterns and character of gardens and trees:

- *retain trees and planting on the street and in front setbacks to minimise the impact of new development on the streetscape*
- *retain trees and planting at the rear of the lot to minimise the impact of new development on neighbours and maintain the pattern of mid-block deep soil planting*
- *retain large or otherwise significant trees on other parts of the site through sensitive site planning*
- *where it is not possible or desirable to retain existing trees, replace with new mature or semi-mature trees*

Improve amenity by increasing the proportion of the site that is landscaped area by:

- *increasing the width of landscaped areas between driveways and boundary fences, and between driveways and new dwellings*
- *providing pedestrian paths*
- *reducing the width of driveways*
- *providing additional private open space above the minimum requirements*
- *providing communal open space*
- *increasing front, rear and .or rear setbacks*

- *providing small landscaped areas between garages, dwelling entries, pedestrian paths, driveways, etc.*

Provide deep soil zones for absorption of run-off and to sustain vegetation, including large trees

- *it is preferable that at least 10% of the site area is provided as a single area at the rear of the site, where there is the opportunity to provide a mid-block corridor of trees within a neighbourhood*
- *where the pattern of neighbourhood development has deep soil planting at the front of the site, it may be desirable to replicate this pattern.*

Minimise the impact of higher site cover on stormwater runoff by:

- *using semi-pervious materials for driveways, paths and other paved areas*
- *using on-site detention to retain stormwater on site for re-use.*

Parking, garaging and vehicular circulation:

- *Consider centralised parking in car courts to reduce the amount of space occupied by driveways, garages and approaches to garages.*
- *Where possible maintain existing crossings and driveway locations on the street.*

SEPP Controls

Minimum site area: 1000m²

Minimum site width: 20 metres

Development cannot be refused if:

- *proposed buildings do not exceed 8 metres in height*

Comment

The site area, site width and the building height complies with the required controls.

Accordingly this application complies with the requirements of this control.

- *the floor space ratio does not exceed 0.5:1*

Comment

This development will provide for an increase in the gross floor area to a maximum FSR of 0.544:1. In accordance with the previous discussion within the SEE, the works which do not alter the bulk and scale of the building as perceived from the neighbouring properties or from the surrounding public domain is considered to be acceptable.

- *the landscaped area is a minimum of 30% of the site*

Comment

The approved landscaping area for the site remains unchanged.

- *the deep soil zone area is a minimum of 15% of the site (must have minimum dimension of 3 metres and it is preferable that two thirds of the deep soil area is at the rear of the site)*

Comment

The approved deep soil zone area for the site remains unchanged.

- *one visitor parking space is provided for development of 6 or less dwelling or two visitor parking spaces for development of 7 or 8 dwellings*

Comment

The approved car parking for the site remains unchanged.

- *0.5 resident parking spaces per bedroom are provided*

Comment

The approved resident car parking to the site remains unchanged.

Additional site-related requirements requiring access to services, bush fire land, and water and sewerage are contained in Clauses 25 to 27

Comment

The site is not located in a bush fire area and will be serviced by water and sewerage.

3 IMPACTS ON STREETSCAPE

Design principles and better practice

Objectives

The design objectives in relation to streetscape impacts are:

- *To minimise impacts on the existing streetscape and enhance its desirable characteristics*
- *To ensure that new development, including the built form, front and side setbacks, trees, planning and front fences, is designed and scaled appropriately in relation to the existing streetscape*
- *To minimise dominance of driveways and car park entries to the streetscape*
- *To provide for a high level activation and passive surveillance to the street*

Built form

Reduce the visual bulk of the development by:

- *breaking up the building massing and articulating building facades*

- *allowing breaks in rows of attached dwellings*
- *using variation in materials, colours and openings (doors, windows and balconies) to order building facades with scale and proportions that respond to the desired contextual character*
- *setting back upper levels behind the front building facade*
- *where it is common practice in the streetscape, locating second storeys within the roof space and using dormer windows to match the appearance of existing dwelling houses*
- *reducing the apparent bulk and visual impact of a building by breaking down the roof into smaller roof elements*
- *using roof pitch sympathetic to that of existing buildings in the street*
- *avoiding uninterrupted building facades including large areas of painted render.*

Comment

As discussed within this Statement, the proposed modifications do not see any change to the height setbacks or building footprint and the visual bulk of the development as perceived from the neighbouring properties and from the Street will be unchanged.

Trees, landscaping and deep soil zones:

Retain existing trees and planting in front and rear setback and the road reserve:

- *where this is not possible or not desirable use new planting in front setback and road reserve*
- *plant in front of front fences to reduce their impact and improve the quality of the public domain.*

Comment

The approved landscaping treatment for the site remain unchanged.

Residential amenity:

- *Clearly design open space in front setbacks as either private or communal open space.*
- *Define the threshold between public and private space, for example by level change.*
- *Design dwellings at the front of the site to address the street.*
- *Provide a high quality transition between in public and private domains by:*
 - *designing pedestrian entries where possible to be directly off the street*
 - *for rear residents, providing a pedestrian entry that is separate from vehicular entries*
 - *designing front fences to provide privacy where necessary, but also allow for surveillance of the street*
 - *ensuring that new front fences have a consistent character with front fences in the street*
 - *orienting mailboxes obliquely to the street to reduce visual clutter and the perception of multiple dwellings*
 - *locating and treating garbage storage areas and switchboards so that their visual impact on the public domain is minimised.*

Comment

The approved landscape plan prepared by Peta Gilliland details how the proposal meets the control

requirements.

The waste storage area is located within the under building parking area and well screened from the street. Waste can be readily transferred to the kerb for collection by Council's waste contractors.

It is considered that the proposed design meets the requirements of this control.

Parking, garaging and vehicular circulation:

Avoid unrelieved, long, straight, driveways that are visually dominant by:

- *varying the alignment of driveways to avoid a "gunbarrel" effect*
- *setting back garages behind the predominant building line to reduce their visibility from the street*
- *considering alternative site designs that avoid driveways running the length of the site,*

Comment

As previously discussed, external configuration of the building and driveway access to the site remains unchanged.

Minimise the impact of driveways of streetscape by:

- *terminating vistas with trees, vegetation, open spaces or a dwelling, not garages or parking (see figure 3)*
- *using planting to soften driveway edges*
- *varying the driveway surface material to break it up into a series of smaller spaces (for example to delineate individual dwellings)*
- *limiting driveway widths on narrow sites to single carriage width with passing point*
- *providing gates at the head of driveways to minimise visual "pull" of the driveway*

Comment

The proposal does not seek to implement any change to the driveway and pedestrian entry to the site.

Where basement car parking is used minimise in impact of the entry by:

- *reducing the width where possible to single vehicle width rather than double*
- *locating it to one side of the site, not the centre where it is visually prominent*
- *recessing it from the main building facade*
- *where a development has a secondary street frontage, providing vehicular access from the secondary street*
- *providing security doors to avoid the appearance of a "black hole" in the streetscape*
- *returning facade material into the visible area of the car park entry.*

Comment

The approved basement car parking is unchanged.

Locate or screen all parking to minimise visibility from the street

Comment

The approved basement car parking is unchanged.

SEPP Controls

For development proposed in a residential zone where residential flat buildings are not permitted:

- the height of all buildings in the proposed development must be 8 metres or less,*
- a building that is adjacent to a boundary of the site must be not more than 2 storeys in height*

Comment

As indicated earlier, the proposed maximum height of this development is to be less than 8m and one and two 2 storeys in height and therefore will be compliant with this control.

4. IMPACT ON NEIGHBOURS

Objectives

The design objectives in relation to minimising impacts on neighbours are:

- *To minimise impacts on the privacy and amenity of existing neighbouring dwellings*
- *To minimise overshadowing of existing dwellings and private open space by new dwellings*
- *To retain neighbour's views and outlook to existing mature planting and tree canopy*
- *To reduce the apparent bulk of development and its impact on neighbouring properties.*
- *To provide adequate building separation*

Design principles and better practice

Built form:

Design the relationship between buildings and open space to be consistent with the existing patterns in the block:

- *where possible maintain the existing orientation of dwelling "fronts" and "backs" (see figure 4a)*
- *where the dwelling must be orientated at 90 degrees to the existing pattern of development, be particularly sensitive to the potential for impact on privacy of neighbours.*

Protect neighbour's amenity by carefully designing the bulk and scale of the new development to relate to the existing residential character, for example:

- *setting upper storeys back behind the side or rear building line.*

Reduce the visual bulk of roof forms by breaking down the roof into smaller elements, rather than having a single uninterrupted roof structure.

Design second storeys to reduce overlooking of neighbourhood properties, for example by:

- *incorporating them with the roof space and providing dormer windows*
- *offsetting openings from existing neighbouring windows or doors.*

Reduce the impact of unrelieved walls on narrow side and rear setbacks by limiting the length of the walls built to these setbacks.

Comment

The proposed works detailed internal reconfiguration is which do not have any significant or adverse impact on the amenity of the surrounding properties.

Trees, landscaping and deep soil zones:

Use vegetation and mature planting to provide a buffer between new and existing dwellings

Locate deep soil zones where they will provide privacy between new and existing dwellings

Planting in side and rear setbacks can provide privacy and shade for adjacent dwellings.

For new planting, if possible, use species that are characteristic of the local area.

Comment

The approved landscaping provisions for the site remain unchanged.

Residential amenity:

Protect sun access and ventilation to living areas and private open space of neighbouring dwellings by ensuring adequate building separation.

Design dwellings so that they do not directly overlook neighbour's private open space or look into existing dwellings.

When providing new private open space minimise negative impacts on neighbours, for example by:

- *locating it in front setbacks where possible*
- *ensuring that it is not adjacent to quiet neighbour uses, for example bedrooms*
- *designing dwellings around internal courtyards*
- *providing adequate screening*

Where side setbacks are not large enough to provide useable private open space, use them to achieve privacy and soften the visual impact of new development by planting screen vegetation.

Comment

The proposed minor internal reconfigurations do not alter the external form of the building and therefore impacts on landscaping within the site and proposed screen planting will remain unchanged.

Parking, garaging and vehicular circulation:

- *Provide planting and trees between driveways and side fences to screen noise and reduce visual impacts*
- *Position driveways so as to be a buffer between new and existing adjacent dwellings.*

Comment

The approved parking and landscaping will remain unchanged.

SEPP Controls

In zones where residential flat buildings are not permitted, development of the rear 25% of the site must not exceed one storey.

Comment

This application proposes internal reconfiguration of the existing approved development, with no change to the building height as it relates to the rear of the site.

Rules of Thumb

Where side setbacks are less than 1.2 m, a maximum of 50% of the development should be built to this alignment.

The length of unrelieved wall along narrow side or rear setbacks should not exceed 8 metres

Living rooms of neighbouring dwellings should receive a minimum 3 hours direct sunlight between 9.00-3.00 in mid-winter neighbouring dwellings

Solar access to the private open space of neighbouring dwellings should not be unreasonably reduced.

Comment

The approved external configurations the building will remain unchanged.

5. INTERNAL SITE AMENITY

Design principles and better practice

Built form:

Design dwellings to maximise solar access to living areas and private opens spaces.

In villa or townhouses style development, provide dwellings with sense of individual identity through building articulation, roof form and other architectural elements, and through the use of planting and building separation:

- *provide buffer spaces and/or barriers between the dwellings and driveways, or between dwellings and communal areas*
- *use trees, vegetation, fencings or screening devices to establish curtilages for individual dwellings.*

Comment

The development faces north, therefore all living areas have been, where practicable, orientated to receive solar access throughout the day.

The proposed modifications do not reduce the extent of solar access enjoyed by the dwellings.

Design dwelling entries so that they:

- *are clear and identifiable from the street or driveway*
- *provide a buffer between public/communal space and private dwellings*
- *provide a sense of address for each dwelling*
- *are orientated to not look directly into other dwellings*

Comment

All dwellings will retain a clear, identifiable entry point from Pittwater Road.

The entry is oriented to restrict direct overlooking to the neighbouring dwellings.

Parking, garaging and vehicular circulation:

Locate habitable rooms, particularly bedrooms, away from driveways, parking areas and pedestrian paths:

- *where this is not possible use physical separation, planting screening devices or louvers to achieve adequate privacy.*

Avoid large uninterrupted areas of hard surface (driveways, garages walls). Small areas of planting can break these up and soften their “hard edge” appearance.

Comment

The approved car parking provisions and areas of landscaping within the site will remain unchanged.

All car parking is to be located in an under building parking level that is set back from the Pittwater.

Screen parking from views and outlooks from dwellings.

Comment

As previously discussed, all car parking will continue to be located in an under building parking level that is set back from the Pittwater Road boundary and screened by landscaping.

Reduce the dominance of areas of vehicular circulation and parking by considering:

- *single rather than double width driveways with passing bays*
- *communal car courts rather than individual garages*
- *single rather than double garages*
- *tandem parking or a single garage with single carport in tandem*
- *the provision of some dwellings without any car parking for residents without cars*

Comment

See above comments in relation to car parking which address these issues.

Residential amenity:

Provide distinct and separate and vehicular circulation on the site:

- *where this is not possible shared driveway/pedestrian paths should be wide enough to allow a vehicle and a wheelchair to pass safely*
- *provide pedestrian routes to all public and semi-public areas including lobbies, dwelling entries, communal facilities and visitor parking spaces.*

Comment

As previously discussed, all car parking will continue to be located in an under building parking level that is set back from the Pittwater Road boundary and screened by landscaping.

The shared vehicle/pedestrian paths are adequate for safe movement by cars and pedestrians.

Ensure that adequate consideration is given to safety and security by:

- *avoiding ambiguous spaces in building and dwelling entries that are not obviously designated as public or private*
- *minimising opportunities for concealment by avoiding blind or dark spaces between buildings, near lifts and foyers and at the entrance to or within indoor car parks*
- *clearly defining thresholds between public and private spaces (for example by level change, change in materials, fencing, planting and/or signage).*

Comment

There will be no change to the external form of the building and the approved landscape provisions are unaltered.

Provide private open space that:

- *generous in proportion and adjacent to the main living areas of the dwelling (living room, dining room or kitchen)*
- *is oriented predominantly north, east or west to provide solar access*
- *comprises multiple spaces for larger dwellings*

- *uses screening for privacy but also allows casual surveillance when located adjacent to public and communal areas (including streets and driveways)*
- *provides both paved and planted areas when located at ground level*
- *retains existing vegetation where practical*
- *uses pervious pavers where private open space is predominately hard surfaces, to allow for water percolation and reduced runoff.*

Comment

The approved landscape plan remains unchanged.

Site and/or treat common services facilities such as garbage collection areas and switchboard to reduce their visual prominence to the street or to any private or communal open space.

Comment

The approved site facilities remain unchanged.

SEPP Controls

Development cannot be refused if:

- *living rooms and private open spaces for a minimum of 70% of dwellings receive a minimum of 3 hours direct sunlight between 9am and 3pm in midwinter-cl.81(e)*
- *private open space is not less than 15 square metres and minimum dimension 3 metres for ground floor dwellings; 10 square metres and minimum dimension 2 metres for other dwellings; or 6 square metres and minimum dimension 2 metres for other dwellings with only one bedroom-cl. 81(f)(i-ii)*

Comment

The approved solar access provisions and private open space areas remain unchanged.

Rules of Thumb

Separation of 1.2 metres should be achieved between habitable rooms and driveway or car parks of other dwellings:

- *this can be reduced if adequate screening is provided.*

Comment

The approved car parking provisions remain unchanged.

Conclusion

In view of the above assessment, it is considered that the modify development continues to achieve compliance with the relevant controls of the Seniors Living Policy and Urban Design Guidelines for Infill Development.