

20th December 2023

The General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655

Dear Sir,

**Statement of Environmental Effects
Modification of Land and Environment Court Issued Consent
Proceedings 2020/53946 – Sun Property Northbridge Pty Ltd v Northern
Beaches Council [2021] NSWLEC 1631
Demolition works and construction of 3 separate multi dwelling housing
incorporating an existing heritage building
12 Boyle Street and 307 Sydney Road, Balgowlah**

1.0 Introduction

On 26th October 2021 the Land and Environment Court of New South Wales (the Court) granted development consent (Proceedings 2020/53946) for demolition works and construction of 3 separate multi dwelling housing incorporating an existing heritage building across the consolidated allotment (DA2019/0081).

We have been engaged to prepare an application to modify the consent pursuant to Section 4.56 of the Environmental Planning and Assessment Act 1979 (the Act). Specifically, the modifications provide for a general refinement in the detailing of the approved development including the rationalisation of the basement car parking layout to reduce excavation on the Boyle Street portion of the property, the reconfiguration of floor plans to improve internal layout efficiencies and enhance accessibility and the removal of the rounded façade treatments and the introduction of a more horizontal façade design to ensure that the new building forms better relate to the architectural character of the retained heritage item.

The modified architectural and landscape designs are also responsive to the conditions of development consent relating to heritage conservation and landscape detailing with the modified architectural bundle prepared by Jennifer Hill from Architectural Projects being the heritage consultant engaged by the proponent to provide expert evidence in the original Court proceedings.

We also confirm that the modifications, the subject of this application, have been refined having regard to the minutes arising from formal pre-lodgement discussions with Council staff and the Northern Beaches Local Planning Panel (PLM2022/0081) with the final design detailing responsive to the issues raised.

The modifications are generally contained within the approved building envelopes such that the 3 dimensional form, streetscape appearance and landscape outcomes as approved are not compromised as consequence of the modifications sought. Further, the spatial relationship of the proposal to adjoining development, including the adjacent heritage items, is maintained together with a complimentary and compatible streetscape presentation. Importantly, this submission demonstrates that the heritage conservation, landscape, drainage and residential amenity outcomes afforded through approval of the original application including visual privacy, solar access and view sharing are not compromised

To that extent Council can be satisfied that the development as modified represents substantially the same development as originally approved and accordingly is appropriately dealt with by way of Section 4.56 of the Act.

2.0 Detail of Modifications Sought

The proposed modifications are detailed on the following amended/additional plans and documentation:

- Architectural plans DA-001(8), DA-101(8), DA-103(8), DA-201(8) to DA-204(8), DA-301(8), DA-302(8), DA-401(8) to DA-403(8), DA-501(8) to DA-506(8), DA-601(8), DA-701(8), SK-208(8) and SK-209(8) prepared by Architectural Projects,
- Landscape plans LA01 to LA03 and LD01 prepared by Taylor Brammer,
- Heritage archival reports and Heritage Impact Statement prepared by Architectural Projects,
- Structural Integrity Methodology Report prepared by Adams Engineering,
- Geotechnical Investigation prepared by JK Geotechnics,
- Arborist advice prepared by Tree Wise Men,
- Access Assessment Report prepared by Building Code Clarity,
- BCA Compliance Assessment Report prepared by Building Code Clarity,
- Stormwater Management Plans prepared by Adams Engineering,
- Survey prepared by Geosurv,
- Traffic and Parking Assessment prepared by TTPA,
- View Impact Assessment prepared by Richard Lamb and Associates, and
- Updated BASIX Certificate prepared by Credwell Energy

Architectural modifications

The proposed architectural modifications are shown clouded on the accompanying plans and can be summarised as follows:

	CHANGES	BENEFIT
201P8	Lower Ground Level	
1.	Steeper ramp more cover	Less visibility facilitates better carpark
2.	Additional lift to TH1 2 Amend lift to Unit 3	Improved access Improved access for Unit 3 and communal
3.	Increase FSR to Unit 01	Increase 10 m ²
4.	Shift garage	More logical car park on 1 level
5.	Entry Unit 01	Moved from rear of garage to entry near lift
6.	Unit 01 layout	Improved amenity / adjusted fenestration / larger access to garden
7.	Reduced excavation	Less impact on neighbours
8.	Stair access from garage Refer SK 201	More equitable access Lower Ground Floor Comparison Proposed versus Approval
	CHANGES	BENEFIT
202P8	Upper Ground Level	
9.	pedestrian path	Reduce shared driveway located at entry to both sides
10.	Reduce garbage	
11.	Steeper ramp	Less visibility increased garden over
12.	Larger garden	Extend garden over ramp, straight path different cut in dry stone wall
13.	Additional lift to TH1 2	Increased accessibility from public space garage to ground and TH1
14.	Town House 1 & 2	amend to 2 level apartments to Single level living Both units have north orientation
15.	Internal arrangement Unit 01 02 03	bedrooms on north, living on south (note skylights) can achieve eastern light
15a.	Dry Stone wall	Steps to access Dry Stone wall
16.	Minor adjust bedroom levels	Lower relative to wall (terrace is retained)
17.	Minor change to heritage item	Change room use minimal fabric change retain nibs for use as adaptable unit
18.	Internal arrangement	Relocate bedroom and entry
203P8	First Floor level	
20.	Additional lift to TH1 2	Improved access
21.	Amend lift to Unit 3	Improved access for Unit 3 and communal use
22.	Internal change TH1 2	1 Less bathroom 1 less bedroom TH2
23.	Town House 1&2 amend to 1 level apartment	Both units have north orientation to Living
24.	Skylight to Unit 02	Achieves north light
24a.	Planter	Land and Environment Court condition bb
25.	Skylight to Unit 03 above kitchen	Achieves north light above kitchen
26.	Minor Increase envelope Minor Increase envelope Refer SK 203	TH1 to accommodate new stair and communal lift to align building To straighten building U3 to accommodate new stair and communal lift Level 1 Plan Comparison Proposed versus Approval

204P8	Roof Plan	
24.	Skylight to Unit 02	Achieves north light
25.	Skylight to Unit 03 above kitchen	Achieves north light
26.	Minor Increase envelope	To accommodate New stair and communal lift
26.	Minor Increase envelope	To rationalize plan
	Refer SK 203	Level 1 Plan Comparison Proposed versus Approval
	CHANGES	BENEFIT
401P8	Section AA	
16.	Minor adjust bedroom levels	Lower relative to wall (terrace is retained)
25.	Skylight to Unit 03 above kitchen	Achieves north light
26.	Minor Increase envelope	To accommodate New stair and communal lift
	Refer SK 204	Section AA Comparison Proposed versus Approval
	CHANGES	BENEFIT
402P8	Section BB	
1.	Steeper ramp more cover	Less visibility facilitates better carpark
	Refer SK 205	Section BB Comparison Proposed versus Approval
	CHANGES	BENEFIT
403P8	Section CC	
7.	Reduced excavation	Less impact on neighbours
	Refer SK 206	Section CC Comparison Proposed versus Approval
	CHANGES	BENEFIT
301P8	Elevations	
301P8	Significant modification	Proposed appearance responds better to heritage Item

SPECIFIC RESPONSE TO PANEL COMMENTS

	CHANGES	BENEFIT
	Lower Ground Level	
	Reduced excavation	Less impact on neighbours
	No Excavation heritage Item	No change to consent
	Upper Ground Level	
	Reduce garbage	located at entry to both sides
	Additional lift to TH1 2	Increased accessibility from public space garage
16.	Minor adjust bedroom levels U02	Lower relative to wall (terrace width is retained)
17.	Minor change to heritage item	Change room use minimal fabric change. Use as adaptable unit.
	First Floor level	
24.	Skylight to Unit 02	Achieves north light
25.	Skylight to Unit 03 above kitchen	Achieves north light
26.	Minor Increase envelope	To accommodate New stair and communal lift
29.	Provide Direct path remove kink	Access more straightforward.

Conditional modifications

The application also seeks the modification of the following conditions of consent:

Condition 1 - This condition is to be modified to reflect the modified plans and supporting documentation.

Condition 2 - This condition is to be modified to reflect the updated geotechnical report.

Condition 9 - This condition is to be deleted as the required architectural and amendments are either no longer applicable or have been incorporated into the modified plans.

Condition 10 - This condition is to be modified to reflect the updated stormwater plans.

Condition 15 - This condition can be deleted as this application is accompanied by a Structural Integrity Methodology Report prepared by Adams.

Condition 23 - This condition is to be modified to reflect the updated stormwater plans.

Condition 35 - This condition is to be modified to reflect/ reference the updated arborist report.

Condition 43 - This condition is to be modified to reflect/ reference the updated arborist report.

Condition 44 - This condition is to be modified to reflect/ reference the updated arborist report.

Condition 52 - This condition is to be modified to reflect the modified landscape plans.

Condition 58A - This condition can be deleted given that all apartments are accessed from ground level and therefore satisfy the definition of multi dwelling housing.

Condition 69 - This condition can be deleted as it is no longer relevant.

3.0 Section 4.56 of the Environmental Planning and Assessment Act 1979

Section 4.56 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 confirm 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 the same fashion as originally approved in terms of view sharing, height, boundary setbacks, privacy, solar access and landscape outcomes.

Whilst floor space is slightly increased, we note that such increase has been facilitated through internal layout efficiencies rather than an increase in building height, bulk or scale. The additional floor space is located within the approved building envelope and will not compromise the view sharing, solar access or visual bulk outcomes achieved through approval of the original scheme. The application continues to comply with landscaped area provisions.

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 external building appearance, envelope and volume as perceived from adjoining properties and the public domain are not materially altered; and

- The modifications maintain the previously approved residential amenity outcomes in terms of views, privacy, visual bulk and overshadowing.

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 4.56 of the Act.

4.0 Manly Local Environmental Plan 2013

Zoning and permissibility

The subject properties are zoned R1 General Residential pursuant to the provisions of Manly Local Environmental Plan 2013 (MLEP). Multi dwelling housing is permissible with consent in the zone. The stated objectives of the zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Multi dwelling housing is defined as follows:

multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

We note that the Court approval related to the construction of multi dwelling housing across the allotment with all dwellings accessed at ground level. The reconfiguration of the Boyle Street fronting pavilion retains the multi dwelling housing topology across the land with all dwellings continuing to be accessed at ground level.

The development, as modified, remains permissible with consent with the modifications proposed not compromising the developments performance when assessed against the objectives of the zone.

Accordingly, there are no statutory zoning or zone objective impediment to the granting of approval to the proposed development.

Height of Buildings

Pursuant to Clause 4.3 of MLEP 2013, the height of a building on the subject land is not to exceed 8.5 metres in height. We confirm that the approved building heights are not materially altered with the development continuing to sit comfortably below the 8.5 metre height standard with the exception of the south-eastern corner of the rear pavilion which continues to breach the 8.5 metre building height standard as depicted in the comparative building height analysis at Figure 1 below.

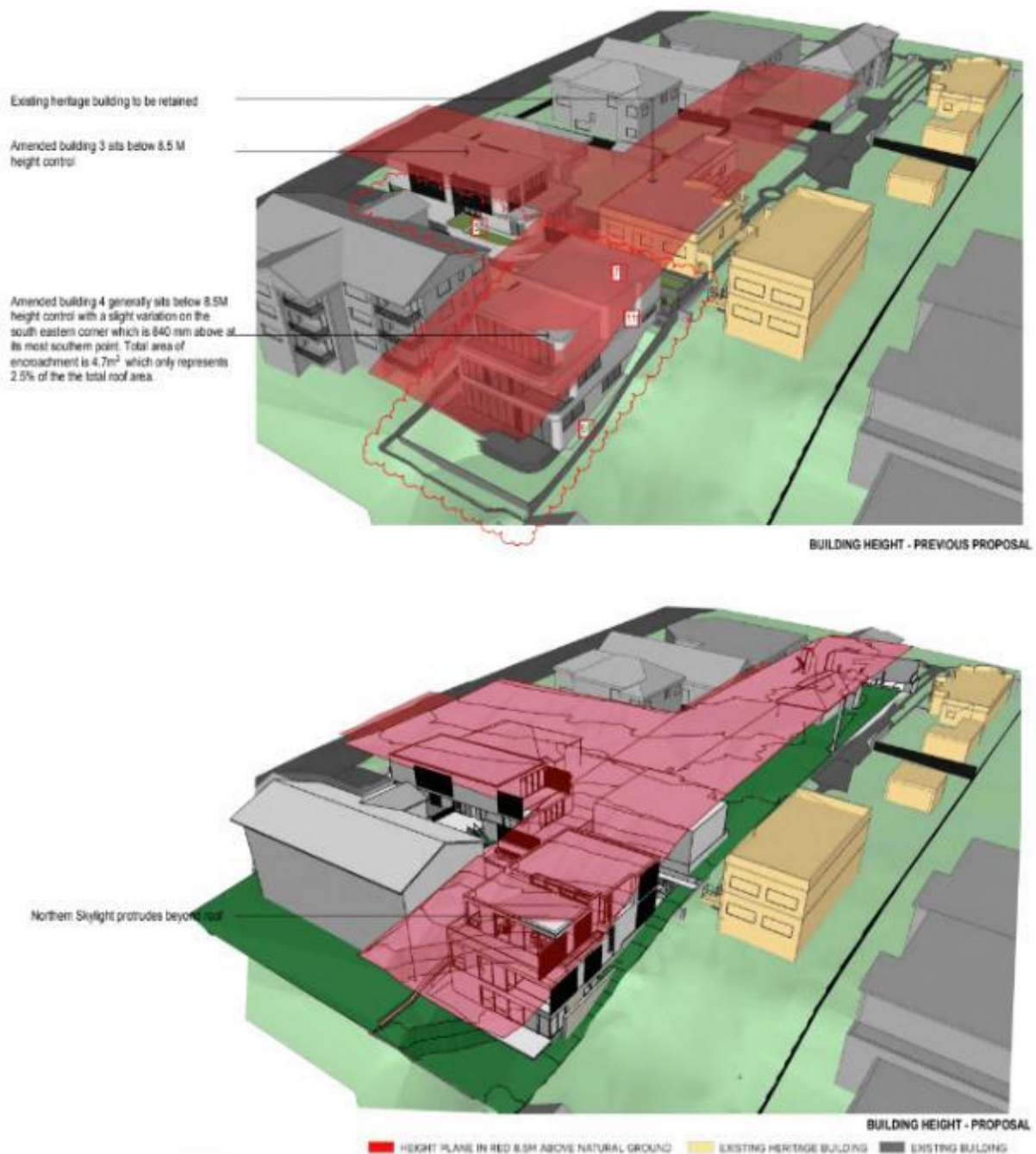


Figure 1 - Plan extract showing a comparison between the approved and modified building heights

Although the clause 4.6 development standard variation provision does not apply to an application made pursuant to section 4.56 of the Act we note that the extent of building height breach resulting from the development as modified is consistent with that the subject of the clause 4.6 variation request upheld by the Court.

Notwithstanding, we provide the following assessment as to the acceptability of the building height breaching elements when assessed against the objectives of the standard:

Consistency with objectives of the height of buildings standard

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

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Comment: The minor building height breaching roof element can be directly attributed to the topography of the site which falls away steeply towards the site's southern boundary with the balance of the development sitting comfortably below the 8.5m height of building development standard. Notwithstanding the minor building height breach, the building height and flat roof form proposed is responsive to/ consistent with the topographic landscape and consistent with the anticipated and prevailing building height established by surrounding development including the adjacent residential flat building at No. 10 Boyle Street. Given the location of the minor building height breaching element relative to the public domain the building height breaching element will not be readily discernible as viewed from the street and to that extent will not give rise to inappropriate or jarring streetscape consequences.

Accordingly, notwithstanding the minor building height breaching element, we have formed the opinion that the development provides for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality. This objective is satisfied.

- (b) *to control the bulk and scale of buildings,*

Comment: Focussing on potential bulk and scale impacts associated with the minor building height breaching elements we make the following observations:

No. 305 Sydney Road

- The building height breaching portion of the development has a parapet height of RL 50.5 being 3.36 metres below the parapet of No. 305 Sydney Road being (RL 53.86) which based on available survey information also breaches the building height standard by at least 360mm along its southern edge. There is a general consistency/ compatibility in the building height established between the medium density housing forms proposed on the site and those established at No.305 Sydney Road and No.10 Boyle Street.
- The building height breaching portion of the development, having a maximum RL of RL 50.5, is 130mm above the sill height of the south facing upper apartment windows (RL 50.37) of No. 305 Sydney Road and 3.12 metres above the sill height of the south facing lower-level apartment windows (RL 47.38) at No. 305 Sydney Road. Further, the building height breaching elements are located approximately 15 metres away from the closest point of the south facing windows in the residential flat building at No. 305 Sydney Road.
- As viewed from No. 305 Sydney Road the building height breach element is appropriately described both quantitatively and qualitatively as minor.
- We note that Building 2, which immediately adjoins No. 305 Sydney Road, remain single storey in height and some 3 metres below the 8.5 metre height standard. Further, the rear portion of Building 4, which has parapet height of RL 51.7, is 6.25 metres above ground level existing where it immediately adjoins the rear alignment of No. 305 Sydney Road being some 2.25 metres below the prescribed maximum building height standard.
- We also note that the primary views and outlook from No. 305 Sydney Road are in a south/ south easterly direction where views towards Middle Harbour and its immediate environs are obtained.
- Accordingly, whilst a small portion of the proposed building breaches the building height standard the vast majority of the building form, as viewed from No. 305 Sydney Road, is below the building height standard by up to 3 metres.

In this regard, we are of the opinion that the minor building height breaching elements do not themselves result in unacceptable visual bulk and scale impacts as viewed from the No. 305 Sydney Road including, but not limited to, the south facing apartment windows and the rear yard of this adjoining property.

No's 6 and 8 Boyle Street

The minor building height breaching element is setback over 10 metres from the southern (rear) boundary of the property where it adjoins No. 8 Boyle Street and additional 3 metres from the northern boundary of No. 6 Boyle Street. The spatial separation between the building height breaching element and the adjoining properties to the south is significant and well in excess of the 8 metre Manly DCP rear setback control.

The landscaping proposed at the rear of the property will soften and screen the rear elevation of the development including the minor building height breaching elements as viewed from these properties. We are satisfied that the minor building height breaching elements will not give rise to unacceptable visual bulk and scale impacts as viewed from these adjoining properties

Given the juxtaposition of the building height breaching elements relative to No. 10 Boyle Street we do not consider there to be any unacceptable visual bulk and scale impacts as viewed from this adjoining property. On the basis of the above analysis, we consider this objective to be satisfied notwithstanding the minor building height breaching element proposed.

- (c) *to minimise disruption to the following:*
- (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*

Comment: Having inspected the site and its surrounds and viewed height poles previously erected on the site from a number of apartments within No. 10 Boyle Street we are satisfied that the minor breaching element will not give rise to adverse public or private view affectation. In forming this opinion, we rely on the detailed View Analysis, dated 23rd August 2021, prepared by Richard Lamb and Associates and the subsequent addendum statement, dated 29th June 2022 which confirms that the view sharing outcomes achieved through approval of the original application are not compromised as consequence of the modifications sought.

On the basis of this analysis, we have also formed my own opinion that the building height breaching elements will not give rise to any public or private view impacts with view impacts minimised through the distribution of floor space on the site. This objective is satisfied notwithstanding the minor building height breaching element proposed.

- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment: Having reviewed the accompanying shadow diagrams, we are satisfied that the minor building height breaching element will not contribute to any unreasonable overshadowing of the public or private domains with adequate sunlight access to private open spaces and habitable rooms of adjacent dwellings maintained. This objective is satisfied notwithstanding the minor building height breaching element proposed.

- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comment: N/A

Having regard to the above, the non-compliant height 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.

Consistent with the first test in *Whebe* as the development, as modified, satisfies the objectives of the standard strict compliance has been found to be unreasonable or unnecessary. Accordingly, there is no impediment to the granting of consent on the basis of building height.

Floor Space Ratio

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 0.6:1 representing a gross floor area of 1053.54 square metres. The stated objectives of this clause are:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

We note that the Court approved Architectural plan DA 503(I) confirmed an approved gross floor area (GFA) of 885.2m² representing a compliant FSR of 0.5:1.

The accompanying modified architectural plans provide for a minor increase in GFA of 15.8m² providing for a total GFA of 901m² and a compliant FSR of 0.51:1. Such GFA/FSR remains comfortably below the 0.6:1 maximum FSR applicable to development on land. A comparative representation of the approved and modified GFA/FSR is in the table below.

Site area 1755.9m²	Clause 4.4 MLEP Maximum FSR 0.6:1 or 1053.54 m²	Compliance
Approved GFA/FSR	885.2m ² representing a compliant FSR of 0.5:1.	Yes – 168.34m ² below the maximum prescribed GFA/ FSR)
Modified GFA/FSR	901m ² representing a compliant FSR of 0.51:1	Yes – 152.54m ² below the maximum prescribed GFA/ FSR)

Whilst the GFA is slightly increased, we note that such increase has been facilitated through internal layout efficiencies rather than an increase in building height, bulk or scale. The additional floor space is located within the approved building envelope and will not compromise the view sharing, solar access or visual bulk outcomes achieved through approval of the original scheme.

As the proposal satisfies the numerical standard it is also deemed to comply with the associated objectives. Accordingly, there is no statutory impediment to the granting of the modifications proposed.

Heritage Conservation

Pursuant to clause 5.10(4) of MLEP 2013 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.

No. 307 Sydney Road is occupied by single storey dwelling which is a member of a heritage group encompassing 3 houses (303 – 307 Sydney Road, Balgowlah) listed under Schedule 5 of MLEP. The subject property is also located within proximity of a number of heritage items as depicted on the MLEP Heritage Map extract at Figure 7 below.



Figure 2 - MLEP Heritage Map extract

In this regard, the application is accompanied by a Statement of Heritage Impact prepared by Architectural Projects which details the performance of the development, as modified, when assessed against the applicable heritage considerations. The report concludes that the proposal will not give rise to any unacceptable impacts on the heritage items or their setting.

Accordingly, Council can be satisfied that the proposal succeeds when assessed against the applicable heritage considerations and accordingly there is no statutory impediment to the granting of consent.

Acid Sulfate Soils and Earthworks

Pursuant to clause 6.1 MLEP 2013 the site is mapped as Class 5 on the Acid Sulfate soils map. As the property is not within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres AHD no further investigation is required in this instance.

Earthworks

Having regard to the clause 6.2 MLEP 2013 Earthworks considerations the application is accompanied by an updated geotechnical investigation prepared by JK Geotechnics. We note that overall excavation is significantly reduced as consequence of the modifications sought.

Such report confirms that the development will not give rise to adverse environmental consequences subject to a number of construction recommendations. Compliance with the recommendations of this report should form a condition of development consent.

Foreshore Scenic Protection Area

Pursuant to clause 6.9(2) the land is identified on the Foreshore Scenic Protection Area Map. Pursuant to clause 6.9(3) development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) measures to protect and improve scenic qualities of the coastline,*
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Having regard to these provisions, we have formed the considered opinion that the proposed modifications will not result in any actual or perceivable impact on the Foreshore Scenic Protection Area in that:

- The height, scale and architectural presentation of the development are contextually appropriate having regard to the built form characteristics established by adjoining development.
- The property is located a considerable distance from the nearest foreshore area with intervening built form and landscape elements ensuring that the proposed development will not be readily discernible as viewed from the harbour, coastal foreshore or foreshore or any public place.
- Having regards to the Land and Environment Court of NSW planning principle established in the matter of Project Venture Developments v Pittwater Council [2005] NSWLEC 191 most observers would not find the proposed building offensive, jarring or unsympathetic to its context or surrounds.
- The development will not give rise to any adverse physical or amenity impacts on the foreshore areas and will enhance the visual amenity of the area generally.

For these reasons Council can be satisfied that the development, as modified, will not give rise to any actual or perceived impact on the Foreshore Scenic Protection Area having regard to the Clause 6.9 considerations.

5.0 Manly Development Control Plan 2013

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

- The siting, scale, form and massing of the development is not altered with the modified proposal maintaining the previously approved building height, setbacks and spatial relationship with adjoining development,
- The development, as modified, continues to provide appropriately for off-street car parking and is able to be appropriately drained,
-
- The previously approved waste management arrangement for development on the site is not compromised.
- 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, and
- The development, as modified, continues to comply with the landscaped area provisions.

6.0 Matters for Consideration Pursuant to Section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979(as amended):

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

The modified development responds positively to the relevant outcomes and built form controls of the Manly Development Control Plan.

Given the ability to satisfy the objectives of the height of buildings standard we have formed the considered opinion that the strict compliance with the numerical standard is both unreasonable and unnecessary under the circumstances.

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 acceptability of the modified carparking layout is addressed in the accompanying Traffic and Parking Assessment prepared by TTPA. The development continues to provide appropriately for off-street carparking.

Public domain

There are no public domain changes.

Economic impact in the locality

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

Site design and internal design

i) Is the development design sensitive to environmental conditions and site attributes including:

- *size, shape and design of allotments?*
- *the proportion of site covered by buildings?*
- *the position of buildings?*
- *the size (bulk, height, mass), form, appearance and design of buildings?*
- *the amount, location, design, use and management of private and communal open space?*
- *landscaping?*

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

We note that the modifications required through the imposition of condition 9 of the development consent have either been incorporated into the modified architectural and landscape plans or are no longer relevant given the modifications sought.

- ii) *How would the development affect the health and safety of the occupants in terms of:*
- *lighting, ventilation and insulation?*
 - *building fire risk – prevention and suppression/*
 - *building materials and finishes?*
 - *a common wall structure and design?*
 - *access and facilities for the disabled?*
 - *likely compliance with the Building Code of Australia?*

The proposed development will comply with the provisions of the Building Code of Australia as detailed within the accompanying report prepared by Building Code Clarity. There will be no detrimental effects on the occupants through the building design which will achieve the relevant standards pertaining to health, safety and accessibility.

Construction

- i) *What would be the impacts of construction activities in terms of:*
- *the environmental planning issues listed above?*
 - *site safety?*

Normal site safety measures and procedures will ensure that no site safety or environmental impacts will arise during construction.

The suitability of the site for the development.

Does the proposal fit in the locality?

- *are the constraints posed by adjacent developments prohibitive?*
- *would development lead to unmanageable transport demands and are there adequate transport facilities in the area?*
- *are utilities and services available to the site adequate for the development?*

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

Are the site attributes conducive to development?

The site has no special physical or engineering constraints 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 general refinement in the detailing of the approved development including the rationalisation of the basement car parking layout to reduce excavation on the Boyle Street portion of the property, the reconfiguration of floor plans to improve internal layout efficiencies and enhance accessibility and the removal of the rounded façade treatments and the introduction of a more horizontal façade design to ensure that the new building forms better related to the architectural character of the retained heritage item.

The modified architectural and landscape designs are also responsive to the conditions of development consent relating to heritage conservation and landscape detailing with the modified architectural bundle prepared by Jennifer Hill from Architectural Projects being the heritage consultant engaged by the proponent to provide expert evidence in the original Court proceedings.

We also confirm that the modifications, the subject of this application, have been refined having regard to the minutes arising from formal pre-lodgement discussions with Council staff and the Northern Beaches Local Planning Panel (PLM2022/0081) with the final design detailing responsive to the issues raised.

The modifications are generally contained within the approved building envelopes such that the 3 dimensional form, streetscape appearance and landscape outcomes as approved are not compromised as consequence of the modifications sought. Further, the spatial relationship of the proposal to adjoining development, including the adjacent heritage items, is maintained together with a complimentary and compatible streetscape presentation. Importantly, this submission demonstrates that the heritage conservation, landscape, drainage and residential amenity outcomes afforded through approval of the original application including visual privacy, solar access and view sharing are not compromised

To that extent Council can be satisfied that the development as modified represents substantially the same development as originally approved and accordingly is appropriately dealt with by way of Section 4.56 of the Act.

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

Yours sincerely

BOSTON BLYTH FLEMING PTY LTD

A handwritten signature in black ink, appearing to read 'Greg Boston', written in a cursive style.

Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director