

18<sup>th</sup> May 2023

The CEO  
Northern Beaches Council  
PO Box 82  
Manly NSW 1655

Dear Sir/ Madam,

**Statement of Environmental Effects**  
**Modification of Land and Environment Court Issued Consent**  
**Case number 2021/00048099**  
**Collaroy Street Pty Limited v Northern Beaches Council**  
**Shop top housing**  
**1 Alexander Street and No. 4 Collaroy Street, Collaroy**

**1.0 Introduction**

On 22<sup>nd</sup> December 2021 the Land and Environment Court of New South Wales (the Court) granted development consent (Case number 2021/00048099) for the demolition of the existing dwelling and the construction of a residential flat building and strata subdivision on the subject site (DA2020/1453).

This consent was subsequently modified pursuant to Mod 2022/0230 involving a refinement in the detailing of the approved development to address internal layout efficiency, serviceability and constructibility issues identified in the preparation of the final Construction Certificate documentation.

We have again been engaged to prepare an application to modify the consent pursuant to section 4.56 of the Environmental Planning and Assessment Act 1979 Act which enables the Court as the consent authority to modify the consent pursuant to section 4.55(8) of the Act. Specifically, the modifications provide for a further refinement in the detailing of the approved development to reflect final construction design development including minor modifications to reflect purchaser variations for individual units. Flood management has also been refined adjacent to the Alexander Street frontage with minor modifications to the retail floor façade, fenestration and planter detailing.

The modifications are generally contained within the approved building envelope such that the 3 dimensional form, streetscape appearance and landscape outcomes as approved are not compromised as consequence of the modifications sought. Importantly, the spatial relationship of the proposal to adjoining development is maintained together with a complimentary and compatible streetscape presentation and appropriate residential amenity outcomes including privacy, solar access and view sharing. That said, we note that the previously proposed pathway within the western setback has been deleted to provide additional deep soil landscape opportunity adjacent to 7 Alexander Street.

To that extent Council can be satisfied that the development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of section 4.56 of the Act which enables the Court as the consent authority to modify the consent pursuant to section 4.55(8) of the Act.

## **2.0 Detail of Modifications Sought**

### **Architectural modifications**

The proposed modifications are shown clouded on plans DA000(3) and DA002(3) to DA005(3), DA006(4) and DA007(3) to DA0015(3) prepared by Walsh Architects. The modifications can be summarised as follows:

#### **Basement**

- Relocation of the pump room to ground floor.
- Removal of stair from basement to Collaroy Street.
- Alterations of car aisles due to the above two changes.
- Introduction of a Supply Air Fan Room at north-east corner of the plan.
- Two additional garages created.
- One new car space added.
- New storage area created where fire pump was previously.
- Reduction in size of Piling Zone, therefore small increases to storage areas.

#### **Ground Floor**

- Relocation of Main Switch Room due to Ausgrid requirement.
- Removal of basement stair now means the two small car spaces can be regular sized now.
- Adjustment of service rooms in south-west corner to accommodate the relocated pump room.
- Removal of pathway outside of building on western side of service rooms. This creates additional deep soil landscaping adjacent to 7 Alexander Street.
- Relocation of bikes due to fire hazard and their proximity to boundary.
- Adjustment of Community Room, Gym and Surfboard Store to remove corridor therefore making these spaces bigger.

- Adjustments to Stair 7 adjacent to surfboard room to remove floor gate (landing is higher than Flood Planning Level)
- Air Intake added adjacent to Stair 7.
- Removal of Stair to the north of Retail 4.
- Removal of ramp to south of Retail 4 as access is at grade outside retail 3.
- New raised planter adjacent to laneway to add more landscaping buffer to lane.
- Adjustment to Façade of Retail 4
- Carpark Exhaust Relocated. This is still 6m from neighbouring building.

#### Level 1

- New planter over stair 7 (west of B102).
- New planter to north of C104 and D101 for enhanced landscaping.
- Small change to bathroom of D103.
- All window sills and balustrades that were 760mm are now lifted to 900mm to allow for better operability.

#### Level 2

- Small change to bathroom of D203.
- All window sills and balustrades that were 760mm are now lifted to 900mm to allow for better operability.

#### Level 3

- Adjustments to unit A301 due to purchaser variations. Small window changes to accommodate new layouts.
- Adjustments to unit B301 due to purchaser variations. Small window changes to accommodate new layouts.
- Small change to bed 3 of D302.
- All window sills and balustrades that were 760mm are now lifted to 900mm to allow for better operability.

#### Roof

- Additional skylight as western window removed on Level 3.

#### Elevations, Sections, Shadows, Height plane

- All updated as per the above items.
- All window sills and balustrades that were 760mm are now lifted to 900mm to allow for better operability.
- Removal of small awning above C104 and D101 (northern face).

The accompanying landscape plans prepared by Sym Studio have been modified to reflect the amended architectural detailing with the overall landscape quality of the development not compromised as consequence of the modifications sought.

The acceptability of the amended car parking layout is addressed in the accompanying Traffic and Parking Assessment prepared by Genesis Traffic with this application also accompanied by an updated acoustic assessment prepared by Wilkinson Murray, an addendum BCA and access report prepared by Jensen Hughes, addendum flooding review prepared by Woolacotts Consulting Engineers, addendum geotechnical review prepared by Alliance and an updated BASIX Certificate. The previously approved drainage regime is not compromised as consequence of the modifications sought.

### **Modification to conditions**

The application also seeks the modification of the following conditions:

#### Condition 1 - Approved Plans and Supporting Documentation

This condition is to be amended to reflect the modified plans and supporting documentation including, but not limited to, the Noise Impact Assessment, dated 11<sup>th</sup> of May 2023, prepared by RWDI Australia Pty Limited. We request that the amendments to Condition 1 be settled with the applicant prior to determination to ensure its accuracy and to prevent construction delays.

#### Condition 3 - Noise of operations

This submission is accompanied by a Noise Impact Assessment and memorandum, dated 11<sup>th</sup> of May 2023, prepared by RWDI Australia Pty Limited in the acoustic report referenced within the existing condition whereby the night-time project noise emissions limit of 35 dBA was derived from an incorrect Rating background noise level. This application seeks to rectify this error by way of reference to the RWDI Australia Report and to that extent we request that the condition be modified as follows:

Noise emissions must not exceed the "Summary dBA Leq,15min" values in table 5-3 of the ~~noise report "20356A" by Wilkinson Murray Pty Noise Impact Assessment, dated 11<sup>th</sup> of May 2023, prepared by RWDI Australia Pty Limited.~~

Reason: To protect amenity in-line with Protection of Environment Operations Act 1997, Noise Policy for Industry, and local DCP.

### Condition 35 - Detailed review of noise

For the same reason as outlined above we request that this condition be modified as follows:

A detailed review of noise emissions is to be conducted as per the recommendations in section 5.2 of the ~~noise report "20356A" by Wilkinson Murray Pty Noise Impact Assessment, dated 11<sup>th</sup> of May 2023, prepared by RWDI Australia Pty Limited.~~ Total noise emissions must not exceed the "Summary dBA Leq,15min" values in table 5-3.

Reason: To protect amenity in-line with Protection of Environment Operations Act 1997, Noise Policy for Industry, and local DCP.

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

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

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

- The proposed use does not change,
- The 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 Warringah Local Environmental Plan 2011**

##### **Zoning and permissibility**

The subject site is zoned E1 Local Centre pursuant to the provisions of Warringah Local Environmental Plan 2011 (WLEP). Shop top housing is permissible with consent in the zone. The stated objectives of the zone are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area;*
- *To encourage employment opportunities in accessible locations;*
- *To provide an environment for pedestrians that is safe, comfortable and interesting;*
- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment;*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

Shop top housing is defined as one or more dwellings located above ground floor retail premises or business premises.

The development, as modified, continues to incorporate dwellings located above ground floor retail premises. Accordingly, the development continues to accord with the Land and Environment Court Judgement Sheahan J within *Hrsto v Canterbury Council* given that the proposed residential units sit entirely above the ceiling height of the ground floor retail tenancies.

The development, as modified, continues to meet the relevant zone objectives given the maintenance of ground level retail tenancies and the appropriate concentration of residential densities within an established Local Centre zone. The height and scale of the modified development are not altered with the development continuing to be responsive to context, compatible with that of surrounding development and will not result in unacceptable or jarring residential amenity, streetscape or broader urban design impacts.

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

### **Height of Buildings**

Pursuant to clause 4.3 of WLEP development on the land must not exceed a building height of 11 metres. The objectives of this control are as follows:

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

**Building height** is defined as follows:

*building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like*

We confirm that the previously approved building heights are not altered as a consequence of the modifications sought.

Accordingly, we are satisfied that the conclusions reached by Walsh C in the matter of Collaroy Street Pty Ltd v Northern Beaches Council [2021] NSWLEC 1779 in his support of the clause 4.6 variation request for building height are not compromised namely:



24. ....Important for the proposal, in compatibility terms, are certain design features which in a sense mitigate potential height impact. Of most importance are the boundary setbacks of the (contravening) pavilion elements which are important in terms of streetscape perceptions as a compatibility factor. That is to say, I agree with Ex M that the contravening elements will be visually recessive, rather than present as obvious or visually bulky to those walking by. Ex M adequately demonstrates that the proposed building, as a consequence of its design response to context, would be capable of existing in harmony with the height and scale of surrounding and nearby development, despite the height contravention.

.....

35. On balance I am convinced that there are sufficient environmental planning grounds to justify the contravention in the circumstances. I believe it generally follows my earlier conclusion that the building height, despite the contravention, does provide a quite responsive and compatible building, with a good capacity to exist in harmony with its setting, in local context terms.

In this regard, we note that the upper level setbacks to all boundaries are maintained with the accompanying shadow diagrams demonstrating the maintenance of compliant levels of solar access to all surrounding development. The modifications do not compromise the visual or aural privacy outcomes afforded through approval of the original scheme with no additional view impact arising as a consequence of the modifications sought.

Under such circumstances, the maintenance of the previously approved building height is acceptable with strict compliance with the building height standard continuing to be unreasonable and unnecessary with sufficient environmental planning grounds to justify the variation sought.

### **Heritage Conservation - Heritage Impact Assessment**

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

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

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

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

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

<i>Former Arlington Amusement Hall</i>	<i>1056–1066 Pittwater Road</i>	<i>Lots 20–25, DP Local 218990</i>	<i>I20</i>
<i>Collaroy Cinema (facades and interiors)</i>	<i>1097 Pittwater Road</i>	<i>Lot 4, DP 6984; Local Lot B, DP 379308</i>	<i>I22</i>
<i>Former Westpac Bank</i>	<i>1121 Pittwater Road</i>	<i>Lot 1, DP 528546</i>	<i>Local I23</i>

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

### **Heritage Considerations**

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

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

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

- Nil

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

- Nil

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

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

In this regard, we confirm that the proposed works, as modified, do not result in any additional heritage conservation impacts and to that extent there is no impediment to the granting of consent.

### **Acid Sulfate Soils**

The original application was accompanied by a Geotechnical Investigation Report prepared by Coffey which assessed the likelihood of acid sulphate soils being present on the site. In this regard, the report contained the following conclusion:

*The laboratory analysis reported SCR results of <0.005% which indicates that ASS is unlikely to be present and therefore no ASS management processes, or procedures are required.*

As no additional excavation is proposed the conclusions reached in the original report are not compromised.

### **Earthworks**

In accordance with the clause 6.2 WLEP 2011 this submission is accompanied by correspondence prepared by Alliance which provides an opinion as to the consistency of the modified development having regard to the original geotechnical analysis prepared in support of the application. This addendum report contains the following commentary:

*Alliance Geotechnical Pty Ltd (Alliance) carried out an initial geotechnical investigation for the proposed development at 4 Collaroy Street Collaroy in April and May 2022. The results of the investigation are presented in Report 14957-GR-1-1 dated 3 June 2022. Alliance also carried out a supplemental geotechnical investigation with two additional boreholes being drilled with the results presented in Report 16138-GR-1-1 Rev A dated 9 December 2022. It is understood that the proposed development has been altered during the DA phase and as such a Section 4.56 application has been made.*

*Alliance has reviewed the changes to the proposed development which are presented on Walsh Architects drawing, Basement, Sheet Number DA002, Revision 2 issued 24 June 2022. Essentially the changes involve changing the shoring walls from secant pile walls to sheet pile walls and as such the walls will be slightly thinner providing more floor space in the basement.*

*Alliance is of the opinion that the original report and supplemental report are relevant for the new plans as the modifications are in keeping with the original development concept and do not add to the geotechnical risk provided the recommendations for design and construction in the original report are followed and as such, will not affect the recommendations regarding design and construction made in the original and supplemental reports.*

## **Flood Planning**

The clause 6.3 WLEP flood planning considerations apply to land at or below the flood planning level. In this regard, this submission is accompanied by a flood gate review prepared by Woolacotts Consulting Engineers which contains the following commentary:

*We have reviewed the architectural drawing DA003\_Rev 3 – Ground Floor (dated 23.03.23) and certify that the adjustments to the property entries along Alexander Street and Service Lane, and associated flood gates, complies with:*

- *The requirements of the Northern Beaches Council Local Environmental Plan (LEP) 2011*
- *Woolacotts Stormwater Management and Overland Flow Report dated 23 October 2020*
- *DA2021-1805 Consent Condition 29*

*The top level of the flood gates at each location is to be RL 4.73mAHD minimum.*

*The new scheme with reduced flood barriers improves risk management by having less hydrostatic flood gates which could fail if not maintained.*

The consent authority can be satisfied that the development remains compliant with clause 6.3 WLEP.

## **5.0 Warringah Development Control Plan 2011**

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

- The siting, scale, form and massing of the development is not materially altered with the modified proposal maintaining the previously approved building height, setbacks and spatial relationship with adjoining development,
- The modified proposal will not give rise to any adverse public or private view affectation,
- The development, as modified, continues to provide appropriately for off-street car parking and is able to be appropriately drained,
- The modified proposal does not compromise the residential amenity outcomes afforded to adjoining development through approval of the original application in relation to views, solar access and privacy,
- The development, as modified, provides appropriately for waste management, and
- The development will remain safe from flooding and geotechnical hazards.

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

Given the minor nature of the modifications sought, the development's performance when assessed against the provisions of SEPP 65 and the ADG are not compromised. That said, the refinement in the layout of apartments will enhance the amenity of the development with the overall design quality of the development not compromised as consequence of the modifications sought.

In accordance with clause 102 of the Environmental Planning and Assessment Regulation 2021, this submission is accompanied by the required design verification statement prepared by the project Architect.

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

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

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

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

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

### *Context and Setting*

i) *What is the relationship to the region and local context on terms of:*

- *the scenic qualities and features of the landscape?*
- *the character and amenity of the locality and streetscape?*
- *the scale, bulk, height, mass, form, character, density and design of development in the locality?*
- *the previous and existing land uses and activities in the locality?*

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

ii) *What are the potential impacts on adjacent properties in terms of:*

- *relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)?*
- *visual and acoustic privacy?*
- *views and vistas?*
- *edge conditions such as boundary treatments and fencing?*

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

### *Access, transport and traffic*

*Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:*

- *travel demand?*
- *dependency on motor vehicles?*
- *traffic generation and the capacity of the local and arterial road network?*
- *public transport availability and use (including freight rail where relevant)?*
- *conflicts within and between transport modes?*
- *traffic management schemes?*
- *vehicular parking spaces?*

The acceptability of the amended car parking layout is addressed in the accompanying Traffic and Parking Assessment prepared by Genesis Traffic

#### *Public domain*

There are no public domain changes.

#### *Economic impact in the locality*

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

#### *Site design and internal design*

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

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

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

ii) *How would the development affect the health and safety of the occupants in terms of:*

- *lighting, ventilation and insulation?*
- *building fire risk – prevention and suppression/*
- *building materials and finishes?*
- *a common wall structure and design?*
- *access and facilities for the disabled?*
- *likely compliance with the Building Code of Australia?*

The development, as modified, will comply with the provisions of the Building Code of Australia as detailed within the accompanying addendum BCA and access report prepared by Jensen Hughes. 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 further refinement in the detailing of the approved development to reflect final construction design development including minor modifications to reflect purchaser variations for individual units. Flood management has also been refined adjacent to the Alexander Street frontage with minor modifications to the retail floor façade, fenestration and planter detailing.

The modifications are generally contained within the approved building envelope such that the 3 dimensional form, streetscape appearance and landscape outcomes as approved are not compromised as consequence of the modifications sought. Importantly, the spatial relationship of the proposal to adjoining development is maintained together with a complimentary and compatible streetscape presentation and appropriate residential amenity outcomes including privacy, solar access and view sharing. That said, we note that the previously proposed pathway within the western setback has been deleted to provide additional deep soil landscape opportunity adjacent to 7 Alexander Street.

To that extent Council can be satisfied that the development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of section 4.56 of the Act which enables the Court as the consent authority to modify the consent pursuant to section 4.55(8) of the Act.

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

Yours sincerely

**BOSTON BLYTH FLEMING PTY LIMITED**



**Greg Boston**

B Urb & Reg Plan (UNE) MPIA

**Director**