

# Statement of Modification

Multi-Dwelling Housing  
5-7 Macpherson Street, Warriewood, NSW

Project 17-088  
March 2018  
Revision A

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# 1 Executive Summary

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The proposal is for modification to a previously approved multi dwelling housing for nine dwellings at the site known as 5-7 Macpherson Street, Warriewood, NSW. The consented DA number is NO248/16. The site covers an area of approximately 2,980 m<sup>2</sup>.

The type of modification sought is under Section 4.55 (previously S96AA) of the *EP&A Act 1979* (Previously a S96AA) – a modification to a Land and Environment Court consent. The Land and Environment Court reference is Case Number 2016/00252260, Level 88 Developments Pty Ltd v Northern Beaches Council. The DA No. is N02048/16. The LEC orders were made on 18 January 2017. The consent authority for this modification application is nominated as Northern Beaches Council.

It is considered cumulatively the amendments deliver substantially the same development as previously approved by the consent authority. The changes to the proposed development are minor and discrete and impacts are also minor.

Minor additional modifications to the plans have been undertaken responding to the Pre-DA meeting minutes to ensure north facing terraces have a minimum dimension of 4 m and additional privacy impacts do not arise between buildings. An updated landscape plan forms part of the application to confirm the proposal meets all landscape area requirements. The modification also clarify that staging of construction is no longer sought.

Generally, the proposal seeks to amend the aesthetics of the building with different materials and finishes using a modular façade design with framing elements around proposed upper level balconies rather than the tiered, pyramid form of the consented development with its overall light-coloured paint and render finish. Modifications to the basement level including an increase in the eastern setback are proposed. Minor modifications to the design of the dwellings including the internal layout and private open space areas are proposed to achieve more buildable and better amenity spaces. A key modification is the incorporation of lifts in each dwelling and a disabled ramp within the common open space which significantly improves accessibility. Minor changes to landscape are proposed to reflect the changes to access around the site and to better coordinate with the consented stormwater management arrangement.

The changes are primarily superficial and aesthetic. However, the underlying envelop and function of the development remains very similar to that consented. The modifications do not entail the radical transformation of the dwelling in terms of building envelop, footprint, number of bedrooms, living areas, car parking spaces, landscaped area or other key development parameters. The most significant change is an increase in the maximum depth of the basement level from RL 5.6 to RL 5.4 to improve the function of the basement. An updated Geotechnical and Acid Sulphate Soil Assessment which also considers groundwater is provided to demonstrate this additional depth gives rise to no additional impacts. The revised basement design at the same time reduces excavation near the eastern boundary and in this regard can be considered to reduce impacts when compared with the consented development.

The proposed dwellings retain solar access in accordance with the consented development and in the case of the lounge rooms of Building C and D solar access is improved.

The proposed modifications do not give rise to increased environmental or amenity impacts on neighbouring sites.

## 2 Proposed Modifications

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Given the nature of the proposed modifications rather than colouring all modifications, a comparison between the consented and proposed plans is provided at DA-0-801 – DA-0-818. These comparisons also provide a red dashed line to indicate the consented building outline against the proposed modified design.

The proposed modifications to the development are as follows:

### 2.1 Floor Plans

#### Garage Level

1. The basement layout has been amended slightly to reduce the length of perimeter wall and improve buildability. The deep indentations between garages are proposed to be removed.
2. The ramp modified to allow for a flat basement level of RL 5.4
3. Internal ramps removed to improve buildability.
4. The location of the visitors parking has been centralised near to the driveway for convenience.
5. Lifts added
6. Fire stairs rearranged
7. Laundries added
8. The basement footprint near the eastern boundary reduced with the setback increased from 0.7m to 4.4 m.
9. The total number of residential parking spaces remains at 21.

#### Ground Floor

##### Common Areas

1. Garbage room reoriented
2. Bicycle parking reoriented
3. Common open space modified slightly with new landscape plan
4. Total area of common open space increased
5. Accessible ramp added
6. Stair configurations adjusted (access to common open space in side setbacks retained)
7. Landscape plan adjusted to address changes to site levels and access around site
8. Landscape plan adjusted to address stormwater drainage line in the western setback and OSD basin in the southern setback.

##### Northern Dwellings

1. Lifts added
2. Internal layout adjusted to co-locate living room and dining room for northern dwellings
3. Stairs consolidated
4. Letter boxes relocated from east wall of waste enclosure to north wall of waste enclosure to improve visibility
5. BBQs shown

6. Building footprints adjusted

#### Southern Dwellings

1. Building entries redesigned to improve visibility
2. Lifts added
3. Stairs rearranged to allow lounge room to have greater depth increasing from 3.4 m to 4.2 m.
4. South facing Kitchen/Dining/Family rearranged to place kitchen in corner.
5. WC relocated
6. Laundries moved to garages
7. Terraces reconfigured
8. Introduction of accessible ramps in communal courtyard
9. BBQs shown
10. Building footprints adjusted
11. Window positions adjusted slightly
12. Southern corners of buildings reduced slightly

#### First Floor

##### Northern Dwellings

1. Realignment of northern wall to align walls of north facing bedrooms
2. Lifts added
3. Reconfiguration of internal layouts
4. Indication of buildable external wall thicknesses
5. Central awnings removed from above Ground Floor windows to living room
6. Roof of Ground Floor reduced in width at southern part of Building A and B

##### Southern Dwellings

1. Addition of lift
2. Reconfiguration of stairs
3. Minor reduction in area of sitting room to accommodate lift.
4. Rearrangement of stair to create sitting room that is not part of circulation space
5. Relocation of bathroom
6. Indication of buildable external wall thicknesses
7. Window positions adjusted
8. Increase in southern wall articulation with a more regular pattern of stepping
9. Pushing out of wall north of void slightly to align with built form of other levels.

#### Second Floor

##### Northern Dwellings

1. Roof extents of Buildings reduced at sides and rear.
2. Northern parapet increased to north slightly.

## Southern Dwellings

3. Addition of lift
4. Provision of blade walls to accommodate proposed façade frame at balcony
5. Reconfiguration of internal layouts to simplify construction
6. Pushing of stairs to edges of buildings to create centralised circulation zone and allow roof forms to be articulated
7. Indication of buildable external wall thicknesses
8. Reconfiguration of building footprint
9. Window positions adjusted
10. Roof forms of First Floor reduced in size
11. Balcony widths reduced by 2.31 m
12. Roof forms above Second Level adjusted to reflect revised dwelling layout
13. Modification to side setbacks as follows:

Element	Consented Design	Proposed Design	Amended Design
<b>Second Floor</b>			
Western setback to balcony (Southern Building)	3.59 m	5.9 m	
Western setback northern and southern part of façade (Southern Building)	5.5 m	5.8 m	
Western setback northern and central part of façade (Southern Building)	5.5 m	3.5 m	
Separation between Dwelling 6 and Dwelling 7 northern and southern part of facades	3.6 m	8.0 m	
Separation between Dwelling 6 and Dwelling 7 northern and central part of facades	3.6 m	3.6 m	
Western setback to balcony	4.0 m	6.2 m	
Western setback northern and southern part of façade	6.0 m	6.2 m	
Western setback northern and central part of façade	6.0 m	4.0 m	

## 2.2 Elevations

The consented plans lacked a number of the building elevations. Additional elevations are provided including inner elevations.

The consented design proposed a basic paint and rendered façade using a variety of 4 shades of beige which are almost indistinguishable. Off white window frames and a colorbond roof in the colour ‘wallaby’ was proposed. The only articulation elements included sun shade devices which were not further detailed. Open palisade balustrades were indicated.

The aesthetic is proposed to be modified to a contemporary modular design with a variation of materials and finishes. The finishes create different textures to the façade and bring a sense of materiality. The central portions of the façade are proposed in grey brick. Balustrades are detailed in a combination of render and clear glass with a railing above. The contribution of windows to the façade design is reinforced by dark window frames. The use of timber cladding to the eaves of the proposed upper level balconies creates visual interest. This timber cladding is applied at portions of the lower levels as well to tie together the composition. Dark frames are applied to the upper balconies to tie in with the window frames. Discrete areas of light coloured render are proposed to set the other materials off from the façade. Exposed concrete columns support the cantilevered balconies, bringing in a contemporary industrial aesthetic.

As part of the new configuration the roof forms have been altered slightly in a number of locations.

### 2.2.1 Building Height within the Streetscape

At the street front (Northern Elevation of Building A and B) the proposed modifications have reduced the maximum height of the proposed parapets. A comparison is provided in the following table.

Element	Consented Design	Proposed Amended Design
<b>Parapet Height</b>		
Building A Maximum Parapet Height	RL 16.265	RL 16.25
Building B Maximum Parapet Height.	RL 17.385	RL 17.05

In the consented development, the front façade included three levels as built form stepped down from the centre of each building towards the sides. The proposed modifications reduce the number of levels to two, eliminating the pyramid effect. The comparison drawing DA-808 includes a red dashed line to show how the modified design relates to the outline of the consented elevation.

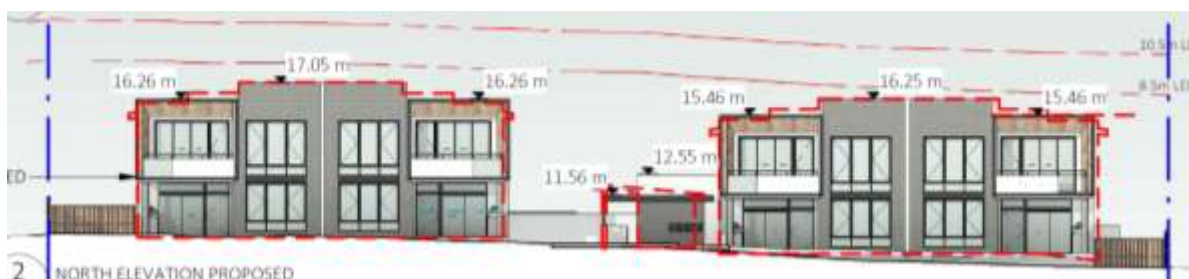


Figure 1: Proposed north elevation with outline of consented elevation indicated in dashed red line

The outline of the proposed modified elevation overlaid on the consented elevation is provided in the figure below.



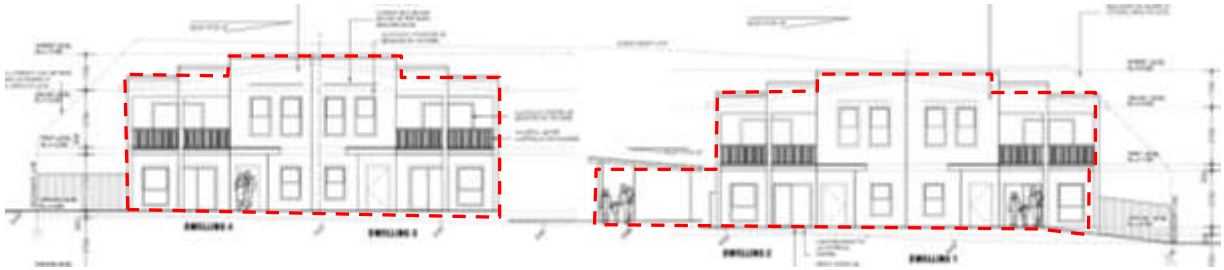


Figure 2: Consented North Elevation with outline of proposed modified elevation indicated in dashed red line

The photomontage comparisons also demonstrate that the proposed modifications in varying the materials across the façade breaks down bulk and scale in contrast to the consented development which was proposed in a single light-coloured paint and render. This single light colour has a greater visual impact and a more monolithic quality. This impact is somewhat mitigated by opening up the sides of the proposed upper level terraces. However, this open terrace form gives rise to privacy impacts on neighbouring sites. The proposed modifications provide a variation of materials generally of a medium tone. Façade elements are grouped into clear modules. This together mitigates the impact of bulk and scale. Overall, the proposed modified development has a very similar bulk and scale in the street when compared to the consented development even though the two forms treat the upper level balcony forms differently. Refer to the following figures.



Figure 3: Consented photomontage



Figure 4: Proposed Modified photomontage

In summary, the proposed development as modified achieves a high quality built form within the streetscape that does not give rise to excessive bulk and scale. The proposed modification represents a streetscape improvement in comparison to the consented development particularly by eliminating the pyramid form of the consented façade and improving the quality of materials and finishes.



## 2.3 Staging

The consented application indicated staged construction with the basement, site works and southern buildings being constructed first and the northern buildings being constructed in a future stage. Staging of Construction is no longer sought. It is intended that the project be constructed within a single stage.

## 2.4 Pre-DA Meeting Response

A pre-lodgement meeting was held at Northern Beaches Council on 7<sup>th</sup> December 2017 (PLM 2017/0036) and official meeting minutes were received on 14 February 2018. A response to the minutes is provided below:

Topic	Council Comment	Response
<p><b>Definition of proposed development:</b> (ref. PLEP 2014 Dictionary )</p>	<p>Modifications to Development Consent No. N0248/16, which approved consolidation of two allotments, demolition of existing structures and construction of multi dwelling housing comprising nine dwellings, associated car parking and landscaping.</p> <p>The development would be most appropriately defined as “multi dwelling housing”</p>	<p>The proposed development is described as multi dwelling housing</p>
<p><b>Clause 4.3 Height of Buildings</b></p>	<p>The site is located within Area K and Area 6 on the Height of Buildings Map of PLEP 2014, with a height limit of 10.5m across the site. Pursuant to Clause 4.3(2F) of PLEP 2014, development must not exceed 8.5m at the street frontage.</p>	<p>The proposed development as modified complies with the 8.5 m height limit at the frontage under the existing LEP as well as the 8.5 m frontage measured 12.5 m from the boundary as per the recent Planning Proposal.</p> <p>Section AA at DA-401 and Section CC and DD at DA-402 demonstrate Block A and B are under the height limit of 8.5 m.</p>

Topic	Council Comment	Response
	<p>Please also be advised that the reduced height limit prescribed by clause 4.3(2F) of PLEP 2014 has been reviewed in a recent planning proposal, that is pending gazettal, to read as follows:</p> <p><i>“Despite subclause (2), development on land identified as “Area 6” on the Height of Buildings Map must not exceed a building height of 8.5 metres for a minimum distance of 12.5 metres, as measured from the front boundary of properties fronting Orchard Street, Macpherson Street, Warriewood Road, or Garden Street.”</i></p> <p>Noting concerns raised below regarding bulk and scale when viewed from the adjoining streetscape area, any submitted plans must proposed building heights that comply with Clause 4.3 of the LEP as outlined above.</p>	<p>Each section provided confirms the entire development is under the 10.5 m height limit.</p> <p>The Northern Elevation comparison at DA-808 confirms that the proposed street façade (the northern faced of Block A and B) have almost an identical outline. The difference is that the consented development tears down towards the side with three stepped levels. The proposed modification has only two steps in the façade.</p>  <p><b>Figure 5: Block A, Excerpt Northern Elevation</b></p> <p>The maximum height of the building at the northern façade is not changed. The modified design is actually lower in some areas and almost identical towards the edges of the building.</p>  <p><b>Figure 6: Consented photomontage</b></p>  <p><b>Figure 7: Proposed Modified photomontage</b></p>

Topic	Council Comment	Response
		<p>The proposed height maximum height of Block A and B are actually lower than what is consented.</p> <p>The bulk and scale in the street is substantially the same and acceptable in this circumstance.</p>
<p><b>Acid Sulphate Soils</b></p>	<p>The site is affected by Class 4 Acid Sulphate Soils, therefore any works that are two metres below ground level would require the submission of:</p> <ul style="list-style-type: none"> <li>• An Acid Sulphate Soils Management Plan Pursuant to Clause 7.1(3) of PLEP 2014; and/or</li> <li>• A preliminary assessment prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works pursuant to Clause 7.1(4) of PLEP 2014.</li> </ul> <p>While it is noted that the approved development included excavation greater than 2 metres in depth, the proposed modifications would seek to further increase the amount of excavation within the site. A future Section 96 Modification Application would therefore need to consider Clause 7.1 and any prior reporting may need to be modified, with further testing to be</p>	<p>A combined Geotechnical and Acid Sulfate Soil assessment statement forms part of the modification application. This statement has had regard to the increased excavation proposed to achieve the proposed RL 5.4 for the basement level. The assessment states that construction will not intercept any acid sulphate soils and management plan is not necessary in this case.</p>


Topic	Council Comment	Response
	undertaken where required.	
<b>Earthworks</b> <b>Geotechnical hazards</b>	<p>Due to additional proposed excavation and changes to the layout of the basement carpark level, the level of excavation and volumes of materials to be removed from the site are likely to be increased.</p> <p>While the site is not subject to a geotechnical hazard, with regard to the above a future Section 96 Modification Application would need to have consideration to Clauses 7.2 and 7.7 of the LEP; previously approved reporting and associated testing, and whether modifications are required to such documentation.</p>	<p>An updated combined Geotechnical and Acid Sulfate Soil assessment statement forms part of the modification application.</p>
<b>Storage Facilities</b>	<p>A lockable storage area of minimum 8 cubic metres per dwelling shall be provided. This may form part of a carport or garage.</p>	<p>8m<sup>3</sup> storage areas are indicated in each garage.</p> <p>Additional storage areas have been added to the garages of Buildings A and B since the Pre-lodgement meeting to ensure 8m<sup>3</sup> is achieved.</p>
<b>Integrated Water Cycle Management</b>	<p>As indicated within the discussion of Part C6.7 of the DCP below, the applicant must ensure that any proposed modifications are undertaken in accordance with Part C6.1 of the DCP and the Warriewood Valley Urban</p>	<p>The Geotechnical Report forming part of this modification application addresses the matter of Groundwater and finds the proposed excavation will not result in the lowering of any groundwater.</p>

Topic	Council Comment	Response
	<p>Land Release Water Management Specification (2001).</p> <p>It is noted that the submitted plans propose to lower the basement carpark level which would require additional excavation; this may change earlier results and recommendations associated with earlier water management reporting (including groundwater management).</p> <p>It is therefore recommended that the applicant carefully review earlier/approved documents including (but not limited to) the:</p> <ul style="list-style-type: none"> <li>• Water Cycle Management Report and associated documentation</li> <li>• Geotechnical Investigation; and</li> <li>• Preliminary Site Investigation</li> </ul> <p>Where inconsistencies arise, additional testing may need to be undertaken and these documents modified where required.</p> <p>Please note, that in the event that if excavation associated with the proposed development extends below the water table (if/where identified),</p>	

Topic	Council Comment	Response
	<p>the Application would become Integrated Development and a licence would be required from the NSW Office of Water.</p>	
<p><b>C6.4 The Road System and Pedestrian and Cyclist Network</b></p>	<p>The design of the amended basement carpark and the entry driveway (if applicable) would need to be undertaken in accordance with Part C6.4 of the DCP. In addition to the submitted plans, necessary information should include swept path diagrams demonstrating that the design of, and access to, all proposed car parking spaces would be in accordance with Australian Standards.</p> <p><b>Note:</b> There are conditions within Development Consent No. N0248/16 which relate to the design of the basement carpark. As a result of the proposed changes, some of these conditions may become redundant and/or require modification, replacement and/or removal. It is suggested that the applicant carefully review the court consent and that the Statement of Environmental Effects identify if/where further</p>	<p>The proposed basement car park employs a 6.69 m aisle width which is sufficient for vehicle manoeuvring. It is consistent with the Australian Standard being greater than the 5.8 m required. The width of the garage entry, width of the entry driveway, width of the aisle and width of the parking spaces have not been altered by the proposed modification. Only the driveway grades have been changed to allow the garage aisle to not have a sloping grade. The new grades to the driveway satisfy the Australian Standard.</p> <p>The garage shall function the same in terms of manoeuvring as the consented application and thus swept paths are not deemed necessary in this circumstance.</p> <p>As per the conditions of consent a signal is to be provided when visitor spaces are occupied.</p> <p>The proposed modifications do not change the total number of car parking spaces proposed. We are unaware that there are any conditions of consent as set out in the Notice of Orders Made for Case 2016/00252260 dated 19 January 2017 which require modification except for the substitution of the relevant drawing listed Under Annexure A.</p>

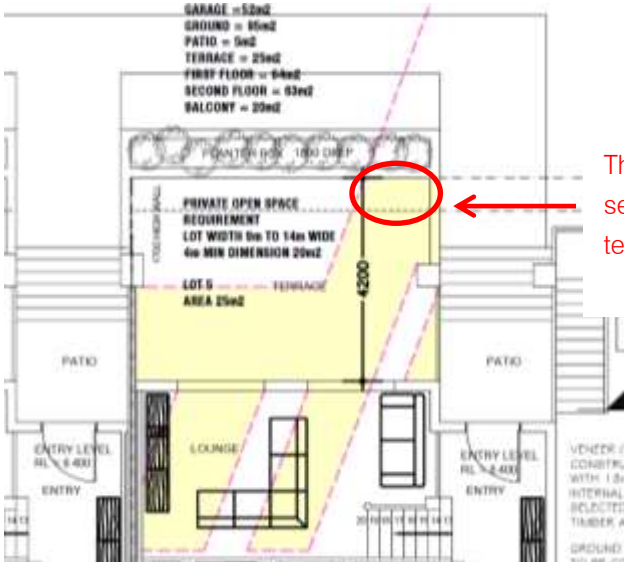
Topic	Council Comment	Response
	modifications to the consent are required.	
<p><b>Landscap e Area (Sector, Buffer Area or Developm ent Site)</b></p>	<p>In accordance with Part C6.7 of the DCP, the modified development must allow for at least 25% of the site to be landscaped.</p> <p>Further, the proposed landscaped area directly impacts on site storage requirements for the overall water cycle management of a sector, buffer area or development site based on the Warriewood Valley Urban Land Release Water Management Specification (2001). The applicant would therefore need to ensure that any proposed modifications are in accordance with this policy and Part C6.1 of the DCP (see above).</p>	<p>The proposed development as modified has a landscaped area of at least 25%.</p> <p>The consented application plans provided landscape area calculations which were unclear and did not distinguish between areas of deep soil, planting on structure and planting dimensions.</p> <p>Therefore, the modification application provides on the site plan at DA-111 a breakdown of landscape areas.</p> <p>DEEP SOIL (<i>LESS THAN 3m</i>) = 185.2m<sup>2</sup>  DEEP SOIL (<i>3m OR GREATER</i>) = 724.3m<sup>2</sup></p> <p><b>TOTAL DEEP SOIL = 909.5m<sup>2</sup> (30.5% OF TOTAL SITE AREA)</b></p> <p>LANDSCAPE ABOVE SLAB (<i>LESS THAN 3m</i>) = 157.1m<sup>2</sup>  LANDSCAPE ABOVE SLAB (<i>3m OR GREATER</i>) = 220.8m<sup>2</sup></p> <p>TOTAL LANDSCAPE ABOVE SLAB = 377.9m<sup>2</sup> (12.7% OF TOTAL SITE AREA)</p> <p><b>TOTAL LANDSCAPE AREA = 1,287.4m<sup>2</sup> (43.2% OF TOTAL SITE AREA)</b></p> <p>The underlying aim of this DCP standard is to facilitate stormwater infiltration. Thus, taking into consideration all deep soil landscape, the landscape area is: 909.5 m<sup>2</sup> of 30.5% of the site.</p> <p>It is noted the original application included landscape in planters above the basement car park as well as paths and terraces.</p> <p>Taking a conservative measurement to consider those areas of the site which are capable of stormwater infiltration (<b>i.e. deep soil</b>), the proposed development certainly meets the standard.</p>
<p><b>Character as viewed from a public place</b></p>	<p>There are concerns regarding the bulk and scale of the front façade when viewed from a public area. The parapet and enclosure over the front balconies are</p>	<p>The frames above the upper level balconies are similar in bulk and scale to the consented development. After the pre-lodgement meeting the height of the frame around the balconies was lowered. The proposed elevation are very similar in height to the consented elevations. The elevations below provide the</p>



Topic	Council Comment	Response
	<p>considered to be excessive; it is recommended that amendments be made to the plans to the primary elevations of dwellings addressing Macpherson street, in order to minimise bulk and scale when viewed from the road reserve in accordance with the controls. You are also referred to comments regarding the height of the primary façade under Clause 4.3 of PLEP 2014 (see above).</p>	<p>outline of the consented built form in relation to the proposed development.</p>  <p><b>Figure 8: North Elevation</b></p> <p>It noted that the maximum RL height of the dwellings facing McPherson Street is lower than the consented development. Further, the consented development is proposed in a light paint and render colour. This light colour gives rise to a greater visual impacts than the proposed modified materials which have are generally medium toned. The variation of materials and finishes grouped into modules also serves to break down bulk and scale, mitigating visual impacts. The consented development with its monochromatic pyramidal configuration did not benefit from this.</p> <p>It is note the proposed development as modified remains below the 8.5 m height limit within 12.5 m of the street front and the total maximum height of Block A and B is reduced by a small degree in the proposed development.</p>
	<p>A minimum landscaped area of 25%, with a minimum dimension of 3m, is to be provided on each individual lot. Please be advised that there are no variations to this development control. Where relevant, you are also directed to the discussion of DCP Part C6.7 above.</p>	<p>The proposed development as modified maintains at least 25% landscaped area (minimum dimension of 3m).</p> <p>DEEP SOIL (3m OR GREATER) = 724.3m<sup>2</sup>  LANDSCAPE ABOVE SLAB (3m OR GREATER) = 220.8m<sup>2</sup></p> <p><b>TOTAL LANDSCAPE AREA (3m OR GREATER) = 945 m<sup>2</sup> (30.2% OF TOTAL SITE AREA)</b></p> <p>It is noted the areas of landscape proposed in the modification application are not substantially different to that consented. The proposed modification maintains a similar extent of pathways and terraces as the consented application.</p> <p>A revised landscape plan has been submitted which takes into consideration the implications of the minor modifications to the building forms proposed, the change to the basement footprint and the stormwater lines approved.</p>

Topic	Council Comment	Response																														
	<p>The minimum required solar access for multi dwelling housing is the following:</p> <ul style="list-style-type: none"> <li>• 70% of the proposed dwellings shall receive a minimum of 2 hours of solar access to windows to the principal living area between 9am and 3pm on June 21</li> <li>• 70% of the proposed dwellings shall receive a minimum of 2 hours of solar access to the principal private open space area between 9am and 3pm on June 21</li> </ul> <p>As indicated in the meeting, there is some concern that the proposed modifications may affect solar access to both the private open space and living areas of the proposed dwellings, particularly the rear-most row of five dwellings that would be situated on the southern side of the site. Information submitted with a future modification application would therefore need to clearly demonstrate that the dwellings and their associated private open space areas would receive solar access. While the applicant may decide how such information is submitted, it is suggested that solar access information include floor plans, internal sections, elevation plans and/or 3D modelling. In accordance with the advisory notes</p>	<p>The solar access diagrams at DA-812-818 indicate that at the POS and north facing living areas of the southern dwellings achieve at least 2 hours solar access in mid winter. Tables are provided on each sheet to demonstrate the solar access. The plans also provide a comparison of with the consented development.</p> <p>It is noted that the proposed modification does include the bringing forward of the north facing lounge (living room) glass line of the southern dwellings. This improves solar access to the dwelling on the whole. The lounge glass line is designed to be almost 100% operable to allow residents to make the lounge a true extension of the terrace. For the purposes of determining if the solar access requirement is met, a space is considered to receive solar access if at least 50% of the space has solar access. This is more rigorous than for instance the Apartment Design Guide which states that a living room is considered to have achieve solar access if 1 m<sup>2</sup> measured 1 m above ground level is sunlit.</p> <table border="1" data-bbox="679 1048 1390 2002"> <thead> <tr> <th>Unit</th> <th>Living</th> <th>Hours</th> <th>Terrace</th> <th>Hours</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>11am-1pm</td> <td>2 hours (5 hours to at least 45% of lounge)</td> <td>9am-3pm</td> <td>6 hours</td> </tr> <tr> <td>2</td> <td>9am-12pm</td> <td>3 hours</td> <td>9am-3pm</td> <td>6 hours</td> </tr> <tr> <td>3</td> <td>11am-1pm</td> <td>2 hours (3 hours to at least 45% of lounge)</td> <td>9am-3pm</td> <td>6 hours</td> </tr> <tr> <td>4</td> <td>9am-12pm</td> <td>3 hours</td> <td>9am-3pm</td> <td>6 hours</td> </tr> <tr> <td>5</td> <td>10am-12pm</td> <td>2 hours</td> <td>11am-1pm</td> <td>2 hours</td> </tr> </tbody> </table>	Unit	Living	Hours	Terrace	Hours	1	11am-1pm	2 hours (5 hours to at least 45% of lounge)	9am-3pm	6 hours	2	9am-12pm	3 hours	9am-3pm	6 hours	3	11am-1pm	2 hours (3 hours to at least 45% of lounge)	9am-3pm	6 hours	4	9am-12pm	3 hours	9am-3pm	6 hours	5	10am-12pm	2 hours	11am-1pm	2 hours
Unit	Living	Hours	Terrace	Hours																												
1	11am-1pm	2 hours (5 hours to at least 45% of lounge)	9am-3pm	6 hours																												
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3	11am-1pm	2 hours (3 hours to at least 45% of lounge)	9am-3pm	6 hours																												
4	9am-12pm	3 hours	9am-3pm	6 hours																												
5	10am-12pm	2 hours	11am-1pm	2 hours																												

Topic	Council Comment	Response				
	<p>within Part D16.9, an accompanying Statement of Environmental Effects should (where necessary) consider NSW Land and Environment Court (LEC) planning principles that relate to solar access. In addition to the above, there is concern that the proposed modifications would change the layout and areas of communal open space; submitted plans and information must therefore demonstrate that the principle usable part(s) of such areas receive at least 50% direct sunlight to for a minimum of 2 hours between 9am and 3pm on 21 June. As with above, the applicant may decide how submitted shadow information would demonstrate how these requirements can be met.</p>		(Note: Solar access 49.6% at 1 p.m.)	(3 hours to at least 45% of lounge)		(3 hours to at least 45% of terrace)
		6	10am-12pm	2 hours (3 hours to at least 45% of lounge)	11am-1pm	2 hours (3 hours to at least 45% of terrace)
		7	10am-12pm  (Note: Solar access 49.6% at 1 p.m.)	2 hours (3 hours to at least 45% of lounge)	11am-1pm	2 hours (3 hours to at least 45% of terrace)
		8	10a.m.-12 p.m.	2 hours (3 hours to at least 45% of lounge)	11am-1pm	2 hours (3 hours to at least 45% of terrace)
		9	10a.m.-12p.m.	2 hours (3 hours to at least 45% of lounge)	11am-1pm	2 hours (3 hours to at least 45% of terrace)
		<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
<p>It is noted that solar access to the lounges is improved in the proposed modified development by eliminating the length of the north facing lounge wall. Further, the southern units maintain sunlight to living rooms of just under 50% until 1 p.m.</p>						

Topic	Council Comment	Response
		<p>It is also noted that the consented solar access diagrams did not take into consideration the overshadowing which will arise from terrace walls and boundary fences. The proposed modified design shadow diagrams show this more faithfully utilising Revit which is a 3D modelling program.</p>  <p>Figure 9: excerpt solar access diagram, consented development, south east unit, 10 a.m.</p>
<p><b>Spatial Separation</b></p>	<p>The submitted plans indicate that some of the proposed dwellings would not be suitably separated. While it is acknowledged that the location of the building footprint is not substantially changed from what was approved, some design changes (e.g. hallways windows) would permit direct view lines between dwellings. As a result, should a variation(s) be proposed to the controls then the following should be provided:</p> <ul style="list-style-type: none"> <li>Plans which demonstrate how the outcomes of the controls (e.g. visual privacy, solar access, reducing bulk</li> </ul>	<p>Modification to the windows side windows at Block C and D have been undertaken since the Pre-DA meeting to address this comment and meet the outcomes of the controls.</p> <p><b>Unit 2 and 3</b></p> <p>Unit 2 and 3 form part of a two storey building. The windows are 10.485 m apart and comply with D16.8.</p> <p><b>Unit 6, 7</b></p> <p><b>Ground Level</b></p> <p>At the Ground Level, the window which is adjacent to the stair case at the interface of Unit 6 and 7. This is a high level window with the sill height 1.8 m from the floor level of the living room. The window is proposed in frosted glass to allow for diffuse light while protecting visual privacy. The window type specified is a top hung awning window which has a limited swing outward. Thus, the window, even when open, will not give rise to visual privacy impacts. This outcome is similar to the consented</p>

Topic	Council Comment	Response
	<p>and scale, etc.) would be satisfied; and</p> <ul style="list-style-type: none"> <li>The Statement of Environmental Effects should include an acknowledgement of the noncompliance and a detailed justification as to why the variation(s) should be supported. It is recommended that any such variation request make specific reference to the control outcomes and how they would be satisfied.</li> </ul>	<p>development which proposed clear high-level windows. The proposed solution will better protect privacy when compared to the consented application through the addition of frosted glass and the use of the awning window type.</p> <p><b>Upper Levels</b></p> <p>The windows at the first floor and second floor are located at corridors which are non-habitable. The glazing is proposed to be frosted (opaque). A top hung awning window type with frosted glass is specified. The window type has a limited opening swinging outward.</p> <p>This frosted glass arrangement is also proposed on the windows facing the side boundary for Unit 5 and 9.</p> <p><b>Bulk and Scale</b></p> <p>The separation between Building C and Building D has actually been increased in the proposed development by limiting the length of the second floor eastern wall of Building C and the second floor western wall of Building D.</p>
<p><b>D16.10 Private and Communal Open Space Areas</b></p>	<p>Development controls applicable to multi-dwelling housing within Part D16.10 of the DCP are as follows:</p> <ul style="list-style-type: none"> <li>At least 16m<sup>2</sup> of Private Open Space (POS) area with minimum usable dimensions of 4m are to be provided for each dwelling. Such areas should also be designed so that they are directly accessible from living areas within the respective dwelling.</li> <li>At least 25% of the site shall be communal open space areas. Communal open space areas should be located in areas of deep soil and have good solar orientation, but also provide opportunities for shade. Please note that the bio-retention area at</li> </ul>	<p>The north facing terrace for all units have been adjusted to achieve a minimum size of 16 m<sup>2</sup> and a minimum dimension of 4 m.</p> <p>The total communal open space proposed is 874 m<sup>2</sup> which is 29% of the site area. This is slightly more than the consented communal open space which has been achieved by extending the COS into the western setback and into a portion of the space between buildings (but not where it will create privacy issues).</p> <p>At least hours of solar access is achieved for at least 50% of the COS between 9 a.m. and 3 p.m. at midwinter.</p> <p>The bioretention area is not proposed as COS.</p> <p>A new landscape plan is provided due to the minor changes to the open space, particularly the access including staircases, new accessible ramp, etc.</p>

Topic	Council Comment	Response
	<p>the rear of the site cannot be utilised as communal open space area.</p> <p>There is concern that changes to the plans may reduce usable communal open space on the site; it is therefore suggested that amended landscape plans are designed so as to permit sufficient usable communal areas.</p> <p>You are also referred to comments within Part D16.9 (Solar Access)</p>	
<p><b>D16.13 Building colours and materials</b></p>	<p>The proposed external colours and materials are considered acceptable and similar to multi dwelling developments. Council recommends external facades facing the street to be predominantly dark and natural tones. White or light coloured external walls are encouraged to be reduced, particularly if can be viewed from the street.</p>	<p>The consented development was almost 100% light coloured paint and render which is contrary to Council's DCP. The proposed development incorporates predominantly medium and dark tones. Light colours are used sparingly as part of the composition. In this case light colour is applied to the a part of the upper level balustrade, the supporting column, soffits at the ground level and some of the low retaining walls and planters. Otherwise medium toned timber cladding, medium toned grey brick and dark window frames and accents are proposed. The proposal is fully consistent with Council's desired outcome.</p>

### 3 Section 4.55 and 4.56 (Previously S96 and S96AA) Assessment

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This proposal seeks consideration under Section 4.55 (previously S96(AA)) and 4.56 of the EP&A Act 1979. These state the following:

#### **4.55 Modification of consents—generally** (cf previous s 96)

- (1) **Modifications involving minor error, misdescription or miscalculation** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent granted by it to correct a minor error, misdescription or miscalculation. Subsections (1A), (2), (3), (5) and (6) and Part 8 do not apply to such a modification.

**Note.** Section 380AA of the [Mining Act 1992](#) provides that an application for modification of development consent to mine for coal can only be made by or with the consent of the holder of an authority under that Act in respect of coal and the land concerned.

- (1A) **Modifications involving minimal environmental impact** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and
- (b) 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
- (c) it has notified the application in accordance with:
  - (i) the regulations, if the regulations so require, or
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1), (2) and (5) do not apply to such a modification.

- (2) **Other modifications** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or

*in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

(c) *it has notified the application in accordance with:*

(i) *the regulations, if the regulations so require, or*

(ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

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

*Subsections (1) and (1A) do not apply to such a modification.*

(3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

(4) *The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*

(5) *(Repealed)*

(6) **Deemed refusals** *The regulations may make provision for or with respect to the following:*

(a) *the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,*

(b) *the effect of any such deemed determination on the power of a consent authority to determine any such application,*

(c) *the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.*

(6A), (7) *(Repealed)*

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

#### **4.56 Modification by consent authorities of consents granted by the Court** (cf previous s 96AA)

(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. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

*(1B) (Repealed)*

*(1C) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*

*(2) After determining an application for modification of a consent under this section, the consent authority must send a notice of its determination to each person who made a submission in respect of the application for modification.*

*(3) The regulations may make provision for or with respect to the following:*

*(a) the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,*

*(b) the effect of any such deemed determination on the power of a consent authority to determine any such application,*

*(c) the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.*

*(4) (Repealed)*

### 3.1 Substantially the Same

The proposed modifications result in a development which is substantially the same as that consented. As per Preston, a development can be considered substantially the same if it is altered “without radical transformation.” The changes to the proposed development are minor and discrete. The changes are primarily superficial to alter the façade materials and organisation of articulation elements which gives a different aesthetic expression. However, the underlying envelop and function of the development remains very similar to that consented. The modifications do not entail the radical transformation of the dwelling in terms of building envelop, footprint, number of bedrooms, living areas, car parking spaces, landscaped area or other key development parameters.

#### 3.1.1 Comparison of Consented Development and Modified Development

The architectural drawings DA-801 to DA 818 provide a detailed side-by-side comparison given the modifications are very minor but effect a large portion of the development. The comparison drawings also include the outline of the consented development on the proposed modified development using a red dashed outline to communicate the nature of the envelop changes. The table below provides a comparison table of key statistics demonstrating that in key areas.

Table 1: Key statistics comparison

Feature	Consented	Proposed Modification
Height – Building A	2 Storeys Maximum RL 16.265	2 Storeys Maximum RL 16.25
Height – Building B	2 Storeys Maximum RL 17.385 m	2 Storeys Maximum RL 17.05 m
Height – Building C	3 Storeys Maximum RL 16.9 m	3 Storeys Maximum RL 16.9 m
Height – Building D	3 Storeys Maximum RL 17.5 m	3 Storeys Maximum RL 17.5 m
Residential Unit Mix	4 x 4 bedroom 5 x 5 bedroom	4 x 4 bedroom 5 x 5 bedroom  (note: Unit 6 and 9 label one bedroom as a

		'study' but it is the same size as the adjacent bedroom. The proposed development modifies this arrangement by providing a built in robe in this bedroom)
<b>Car Parking</b>	18 resident spaces 3 visitor spaces	18 resident spaces 3 visitor spaces
<b>Communal Open Space</b>	787m <sup>2</sup> (26%)	874m <sup>2</sup> (29%)
<b>Solar Access</b>	9/9 (100%)	9/9 (100%)

## **4 Section 4.15 Assessment**

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### **4.1 Environmental Planning Instruments**

The following EPIs are relevant for consideration in this instance:

- SEPP BASIX 2004
- SEPP 55 – Remediation of Land

#### **4.1.1 SEPP BASIX**

A BASIX certificate does form part of this modification application.

#### **4.1.2 SEPP 55**

The proposed modification does not impact on the likelihood of contamination and it can be considered that the assessment under the original DA application can stand.

#### **4.1.3 Local Government Planning Controls**

The relevant Local Government Development Control Plan that applies to the site is:

- Pittwater LEP 2014

The proposed development is substantially the same as the consented development. The proposed modifications do not give rise to any additional non-compliances when compared to the consented development. The proposed development complies with the LEP height limit.

#### **4.1.4 Local Government Policies and DCPS**

The Relevant DCP is:

- Pittwater 21 Development Control Plan

The potential DCP non-compliance of concern were raised in the Pre-DA meeting minute provided by Council. These are addressed under the Pre-DA response contained in this report.

### **4.2 Regulations**

There are no additional regulations that are relevant to the proposal and impact upon its permissibility.

## 4.3 Potential Environmental Impacts

This proposed Modification Application is to amend N0248/16 approved by the NSW Land and Environment Court.

The proposal seeks to amend built form by a minor degree to improve the overall buildability, accessibility and marketability of the proposed. Side-by-side comparison plans are provided at DA-0-801-809 and comparison shadow diagrams are provided at DA-0-811 to DA-0-962.

### 4.3.1 Basement and Excavation

Improvements:

- Improved accessibility for persons with a mobility impairment
- Better wayfinding for visitors
- Improved buildability
- Reduced excavation near the eastern boundary

The consented basement design utilised numerous stepping floor levels (RL 5.6 – RL 6.48) and an intricate stepped footprint. The footprint also extended near to the eastern boundary of the site.

The proposed modifications set a consistent basement level at RL 5.4 m. The basement is pushed away from the eastern boundary. Generally, the southern edge of the basement footprint extends further to the south by 600 mm. A generous setback to the southern boundary of a minimum of approximately 9.6 m is achieved.

Visitor parking is relocated from 3 disparate locations in the basement to a central location near the ramp to improve safety and wayfinding.

The increase in the basement depth to a consistent RL 5.4 m does not give rise to adverse impacts. The geotechnical investigation done previously with the findings set out in the letter from Martens & Associates Pty Ltd dated 24 November 2016 observed no evidence of groundwater at borehole depths of 4.77 mAHD. The proposed basement level of RL 5.4 mAHD, being above the stated investigation levels, is not likely to give rise to additional impacts beyond the consented development. The updated Geotechnical Assessment forming part of this application confirms that the proposal is not expected to impact on groundwater levels.

The reduction in excavation near the boundary is also likely to reduce potential impacts on neighbouring sites.

The total number of car parking spaces is not proposed to be modified. The proposed basement ramp meets the applicable Australian Standard. The proposed aisle width allows for manoeuvring. The proposed car parking spaces comply with the Australian Standard.

The proposed modifications are consistent with the applicable controls and will not give rise to increased impacts in comparison to the consented development.

#### **4.3.2 Ground Level**

- Improved amenity
- Better accessibility
- More efficient and usable internal layout

The key modification to improve amenity is the increase in the depth of the north facing living rooms/lounges and increase in operable glazing to the lounge. The increase in operable glazing creates a seamless connection between the north facing terrace and the north facing living room in effect allowing the living room/lounge to function as an extension of the private open space if desired. The stair positions have been modified so they do not encroach into the north facing living room/lounge space.

The incorporation of a lift to each dwelling significantly improves accessibility of the common open space and dwellings and provides a public benefit in this regard.

The proposed amended design also reduces the building footprint slightly near the side boundaries.

#### **4.3.3 First Floor**

The proposed addition of the lift has facilitated a minor modification to the internal layouts of the First Floor. The modified design also seeks to create a clear corridor and consolidated vertical circulation zone.

At the northern buildings the footprint of the ground level rear roof has been reduced. This reduces impacts including shadow impacts.

The building footprint is almost identical except at the southern buildings. The southern corners of the southern buildings have been set back slightly more than the existing consent. The northern façades of the southern buildings towards the centre of each building has been increased slightly. This increase gives rise to no increased shadow impact due to the position of the extended portion of the building away from the side boundaries of the site. The

The proposed modifications give rise to no increased impacts while improving the internal amenity of each dwelling.

#### **4.3.4 Second Floor**

The extent of the north facing balcony has been reduced with an increased side setback. Roof forms which extend into the setback above the First Floor (and which can be seen on the Second Floor Plan in the consented development) have been eliminated. At the same time, it is proposed to pop out a stair and bathroom into the side setback area. The building envelope is reduced where Building C and D interface so that overall, the building envelope is not larger than the consented development. The bulk and scale and shadow impacts are thus not increased because the floor space. Further, at Building D, the

length of the floor has actually been reduced slightly, glassline to glassline. This together with a reduction in the extent of the roof overhangs and key corners reduces bulk and scale and shadow impacts.

#### **4.3.5 Roofs**

Generally, the top roof areas have been reduced by reducing overhangs. This helps to reduce shadow and visual impacts.

#### **4.3.6 Shadow Impacts**

The modifications do not give rise to increased shadow impacts. In many areas, the shadow impacts are reduced. This is achieved through key reductions to the roof overhangs and discrete changes to the building envelope. For example, at Building C the western roof edge above the First Floor is eliminated and the balcony at the Second Floor is setback from the side boundary significantly. Thus, even though a pop out for the stair and bath is proposed at the western end of the dwelling, the shadow impact does not increase.

It is noted the consented shadow diagrams did not take into account overshadowing from boundary fences and terrace walls. This is the additional overshadowing that is apparent on the shadow diagram comparison at DA-951.

The shadow diagrams undertaken for the modifications were generated using Revit 3D software and the relevant survey data to achieve accuracy. A certification form is provided as part of this application.

Generally, the shadow impacts of the modification are less than what was deemed appropriate and acceptable for the consented application.

#### **4.3.7 Visual Impacts**

The proposed development reduces visual impacts when compared to the consented development particularly within the streetscape. Acceptable visual impacts are achieved through the following:

- Good quality materials and finishes including brick, timber and metal cladding with limited use of paint and render.
- A high quality contemporary aesthetic which reinterprets traditional materials.
- Façade articulation
- A medium and dark colour palette which represents a significant improvement from the light coloured paint and render currently consented.
- Maintaining a two storey scale to the street.
- Ensuring good quality landscape in all setbacks.
- Reducing the basement extent in the eastern setback to allow for more deep soil planting.

#### **4.3.8 Stormwater**

The proposed development is substantially the same in terms of building footprint and impervious surfaces. An updated stormwater management plan forms part of the modification application to ensure the minor changes do not give rise to issues. The consented OSD arrangement is not impacted by the modifications. The proposed development as modified shall not give rise to adverse impacts.

#### **4.3.9 Geotechnical**

The modification application includes an updated combined geotechnical and acid sulphate soils assessment which has regard to potential impacts on ground water and soils arising from the proposed minor increase in basement depth. The assessment finds no additional impacts shall arise.

### **4.4 Notification**

It is anticipated that the proposal will be renotified to the adjacent neighbours for comment.

### **4.5 Consideration of Submissions**

Any submissions received will need to be considered in the assessment.

### **4.6 Suitability of the Site**

The modification will not change the suitability of the site for the development.

### **4.7 The Public Interest**

The proposed modifications provide a better presentation to the public domain with higher quality materials and finishes. The proposed modifications include the provision of lifts and accessible ramps, improving significantly the accessibility of the site. The proposed modifications reduce excavation near the side boundary. The proposed modifications maintain high quality landscape.

The proposed development can be considered in the public interest.