

27-29 North Avalon Road, Avalon Beach

# Section 4.55(8) Planning Statement

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**27-29 NORTH AVALON ROAD, AVALON BEACH**

Internal and external modifications to the  
approved development

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# 1.0 INTRODUCTION

Development Application DA2019/1260 for demolition works and construction of a seniors housing development comprising ten (10) self-contained dwellings for seniors or people with a disability and basement parking for twenty resident vehicles and two visitor spaces, site consolidation and removal of 45 trees at 27 and 29 North Avalon was approved by the Land and Environment Court on 26 August 2021.

This submission has been prepared as supporting documentation for an application made pursuant to Section 4.55(8) and Section 4.55(2) of the Environmental Planning and Assessment Act 1979 to modify the consent for Development Application DA2019/1260.

The application proposes relatively minor modifications to each of the four buildings to improve the internal layout and amenity of the dwellings within the development. Modest additions are proposed to the rear of Dwellings 1, 2, 3, 6, 7 and 8, which are in the two buildings on the northern side of the site. Minor additions are proposed to the dwellings at the rear of the site. Dwellings 5 and 9 are to be extended above the basement and minor additions are proposed on Level 2 to the rear of Dwellings 4, 5, 9 and 10.

Minor external changes are proposed including changes to window sizes, change to the roof over the central stairwell, adjustments to the position of the hot water and heat pumps, updates to the schedule of colours and finishes and the reconfiguration of the waste collection pad and fire hydrant booster. The changes are detailed in this Statement and are clearly identified on the architectural plans prepared by Environa Studio.

The proposed modifications are detailed on the architectural plans prepared by Environa Studio. The application is accompanied by the documents identified in the table below.

Report/Plan	Author
Stormwater and Flood Impact Assessment Letter of Advice – 20 January 2022	ACOR Consultants
Landscape Plans	John Lock & Associates
BASIX Certificate	Efficient Living
Arboricultural Certification	Rain Tree Consulting

The amended proposal retains fundamental components of the approved development with no changes proposed to the number of dwellings or bedrooms within the development, no change to the number of car parking spaces within the development and only minor changes to the footprint of the development, based on the setbacks established by the approved development.

The proposed additions will have no adverse impact on the streetscape as the modified elements of each building are located behind the front building line and within the approved side and rear setbacks. The development does not result in any significant reduction of the landscaped area or deep soil zone within the development and the proposal remains compliant with the applicable landscaped open space and deep soil area requirements. The amended proposal does not require the removal of any additional trees.

The proposed modifications do not result in any significant or non-complying impacts on the amenity of the adjoining properties.

Having regard to the applicable legislative framework, the proposed amendments to the approved development are such that the development retains the same fundamental characteristics and is therefore substantially the same development. The amended development remains consistent with the aims and

objectives of the relevant environmental planning instruments and development control plan whilst remaining compatible with the character of the locality.

## 2.0 SITE DESCRIPTION AND LOCATION

The site is located in the suburb of Avalon Beach which is located within the Northern Beaches Local Government Area. The site is located to the east of Barrenjoey Road and is south-west of Bangalley Head. The location of the site is shown in Figure 1.



Figure 1:

Location of the Site (Source: Google Maps 2021)

The site is legally described as Lot 32 DP 8394 and Lot 33 DP 8394 and is known as 27 North Avalon Road and 29 North Avalon Road. The site is located on the southern side of North Avalon Road between Tasman Road and Marine Parade. An aerial view of the site and surrounds is provided at Figure 1.

The site is rectangular in shape and has a total area of 2,226 square metres. The site has a 36.58 metre frontage to North Avalon Road and a side boundary length of 60.96 metres.

27 North Avalon Road is improved by a single storey brick dwelling with a tiled roof and an attached single garage. Two outbuildings are located to the rear of the site. Vehicular access is provided via a driveway crossing on the western side of the site's frontage to North Avalon Road.

29 North Avalon Road is improved by a single storey brick and tiled dwelling with an attached carport. A brick outbuilding is located to the rear of the dwelling, adjacent to the eastern boundary. Vehicular access to the site is provided via a driveway crossing on the western side of the site's frontage to North Avalon Road. A brick fence along the site's frontage to North Avalon Road.

The structures on both allotments are in poor condition and do not make a positive contribution to the streetscape.



Figure 2:

Aerial View of the site (Source: Six Maps, Department of Lands 2021)

A proposed drainage easement runs across the site from the north-east to the south-west. The existing dwelling at 27 North Avalon Road is located north of the proposed easement while the existing dwelling at 29 North Avalon Road is south of the proposed easement.

The topography of the site is characterised by a gradual fall from the east to the west and is otherwise generally level. The site is vegetated with largely unmaintained, exotic and native mature trees and smaller shrubs. The 59 trees on the site (and within the road reserve) are identified in the accompanying Arboricultural Impact Assessment Report prepared by Raintree Consultancy.

Bus stops are located approximately 400 metres walking distance of the site on Barrenjoey Road as shown in Figure 1. Footpath access to the bus stops is proposed along the southern side of North Avalon Road. A pedestrian island has been constructed on Barrenjoey Road to allow pedestrians to cross Barrenjoey Road.

The site is serviced by the Keoride public transport service. The Keoride service operates on the Northern Beaches and picks passengers up from either home, a designated point of interest within the service area or the nearest bus stop and takes passengers directly to the closest transport hub at Avalon, Narrabeen, Warriewood or Mona Vale.

The surrounding development consists of one and two storey detached dwellings. The majority of houses have a pitched roof and are either face brick, painted brick/render or weatherboard with a light external colour scheme. The front setback of dwellings in the street tends to be landscaped with groundcovers, shrubs and a limited number of trees. Front fences of varying heights and styles are a notable feature of the streetscape of North Avalon Road.

A small pocket of local shops is located to the west of the site, on the southern side of North Avalon Road.

A seniors housing development known as 'Drift' has been constructed north of the western end of North Avalon Road at 4-6 Bangalley Way, Avalon Beach. This development was approved by Council on 29 September 2016 under Development Application No. N0555/155 and subsequently modified under Modification Application No. N0555/15/S96/1) by way of a section 34 agreement in the Land and Environment Court.

A seniors' housing development has also been constructed at 7 North Avalon Road, Avalon Beach.



## 3.0 PROPOSED MODIFICATIONS

### 3.1 Approved Development - DA2019/1260 (Armada Avalon Pty Ltd v Northern Beaches Council [2021] NSWLEC 1490)

Development Application DA2019/1260 for demolition works and construction of a seniors housing development comprising ten (10) self-contained dwellings for seniors or people with a disability and basement parking for twenty resident vehicles and two visitor spaces, site consolidation and removal of 45 trees at 27 and 29 North Avalon was approved by the Land and Environment Court on 26 August 2021.

### 3.2 Proposed Modifications

The application proposes internal and external modifications to the approved development. The modifications are clearly identified on the architectural plans prepared by Environa Studio and are detailed below.

#### Internal layout

The application proposes relatively minor modifications to the footprint of each of the four buildings, and the area of the dwellings, to improve the internal layout and amenity of the dwellings within the development. Drawings 985 and 986 prepared by Environa Studio clearly identify the additional area proposed in red and the reduced approved area shown in light blue as shown in Figures 3 and 4 below.

The application proposes modest additions to the rear of the two buildings on the northern side of the site. The additions will result in a relatively minor increase to the floor area of Dwellings 1, 3, 6, 7 and 8 as the rear (southern) wall has been moved 1.445 metres further south. The rear wall of Dwelling 2 has been moved 1.695 metres further south to align with the rear wall of Dwellings 1 and 3.

The application also includes a minor extension of Dwellings 5 and 9 on Levels 1 and 2. The western wall of Dwelling 5 has been moved 460mm to the west and the eastern wall of Dwelling 9 has been moved 460mm to the east. The minor addition to each dwelling will be above the basement and will not therefore result in the loss of any landscaped area or deep soil area.

The rear wall of the upper level of Dwellings 4, 5, 9 and 10 is proposed to be moved 900mm further south.

No changes are proposed to the front setback of the development.

No change is proposed to the minimum approved side setbacks.

No changes are proposed to the setbacks of the rear dwellings to the side or rear boundaries at ground level.

The waste room has been reconfigured in basement and roller doors have been removed from the majority of car parking spaces.

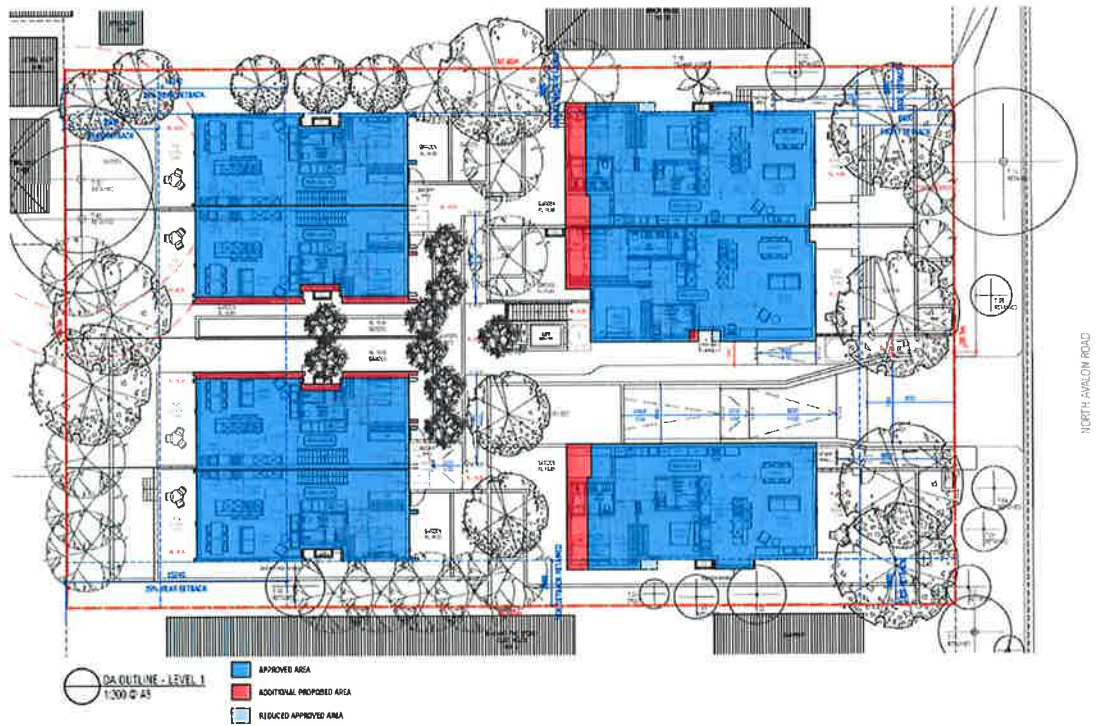


Figure 3:

Extract from the DA Area Outline Plan- Level 1 (Source: Drawing 985 Revision K prepared by Environa Studio)



Figure 4:

Extract from the DA Area Outline Plan - Level 2 (Source: Drawing 986 Revision K prepared by Environa Studio)

## External

The application proposes to amend the approved colours and materials to retain a lighter colour scheme, which is consistent with both the character of development in the locality and improves the environmental performance of the development by reducing heat absorption. The change to the external colours is consistent with the State Government's proposal to ban dark roofs as part of its commitment to deliver more sustainable housing and reach its target of net zero emissions by 2050.

Minor changes are proposed to the placement of the heat pumps, air conditioning units and hot water units adjacent to Dwellings 1, 3, 4, 5, 9 and 10.

Minor changes are proposed to the size and proportions of windows on each elevation as detailed on the plans. Minor modifications are also proposed to the position of the skylights for Dwellings 4, 5, 9 and 10.

A change is proposed to the configuration of the waste collection pad and fire hydrant booster.

A minor change is proposed to the roof over the central stairwell.

A planter and garden bed has been added on the eastern side of Dwelling 9, over the basement.

Tree 24 is now shown on the architectural plans and landscape plans as a tree that is to be removed as an Arborist has confirmed it is a dead tree.

### 3.3 Numerical Summary

Standard	SEPP HSPD Standard	Approved	Proposed
No. of dwellings	N/A	10	10
Car parking spaces	Min.	22 (including 2 visitor spaces)	22 (including 2 visitor spaces)
GFA/FSR	1,113m <sup>2</sup> (0.5:1)	1,113m <sup>2</sup> (0.5:1)	1,203.4m <sup>2</sup> (0.54:1)
Height	8 metres or less (measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point)	Less than 8 metres	Less than 8 metres
Landscape	668m <sup>2</sup>	702m <sup>2</sup>	689.4m <sup>2</sup>
Deep Soil	334m <sup>2</sup>	618m <sup>2</sup>	609.7m <sup>2</sup>

### 3.4 Plans to be modified

Name of Plan	Revision	Plan Number	Date	Prepared By
Site Plan	J	030	16/06/2022	Environa Studio
Basement	J	101	16/06/2022	Environa Studio
Level 1	M	102	16/06/2022	Environa Studio

Name of Plan	Revision	Plan Number	Date	Prepared By
Level 2	L	103	16/06/2022	Environa Studio
Roof Plan	L	110	16/06/2022	Environa Studio
AA+ BB	I	120	21/04/2022	Environa Studio
North + East	K	130	19/05//2022	Environa Studio
South + West	L	131	16/06/2022	Environa Studio
Elevations	L	132	16/06/2022	Environa Studio
Materials and Finishes	L	210	19/05/2022	Environa Studio

### 3.5 Conditions to be modified

The following table summarises the changes required to the conditions of consent as a result of the proposed modifications.

Condition	Required Modification
1a Approved plans and supporting documentation	<p><b>Condition to be modified</b></p> <p>The condition is to be modified to refer to the amended plans, including the Materials and Finishes Schedule (Drawing 210 Revision L dated 19/05/2022). The amended plans are identified in section 3.4 above.</p>
10(c) Amended Schedule of Colours and Finishes	<p><b>Condition to be deleted</b></p> <p>Condition 10 is as follows:</p> <p><b>10. Amended Schedule of Colours and Finishes</b></p> <p><i>The Approved Materials and Finishes Schedule is to be amended, as follows:</i></p> <p><i>a. The proposed use of "White" for the external weatherboards (WB) is to be replaced with Dulux "Grey Daze" or darker.</i></p> <p><i>b. The proposed use of "Surf Mist" for metalwork, gutters, downpipes and awnings (G) is to be replaced with a colour/tone equivalent to or darker than Colorbond "Windspray", except for the North Avalon Road façade where Dulux "Grey Daze" or darker is to be used.</i></p> <p><i>c. The proposed use of "Shale Grey" for metalworks roofing (R) is to be replaced with a colour/tone equivalent to or darker than Colorbond "Woodland Grey".</i></p> <p><i>With the exception of eave linings and, window/door frames and balustrades, the use of white or light colours on any external surface is not permitted.</i></p> <p><i>The Amended Materials and Finishes Schedule is to be submitted to the Certifying Authority prior to the issue of the construction certificate.</i></p> <p><i>Reason: To minimise the visual impact of the development.</i></p> <p>To provide a colour scheme that is consistent with both the character of the locality and improves the environmental performance of the development,</p>

Condition	Required Modification
	<p>the application proposes deletion of condition 10 and inclusion of the Materials and Finishes Schedule (Drawing 210 Revision L dated 19/05/2022) in Condition 1. The change to the colours is consistent with the State Government's proposal to ban dark roofs as part of its commitment to deliver more sustainable housing and reach its target of net zero emissions by 2050.</p>
<p>10B Private Open Space of Dwelling 5</p>	<p><b>Condition to be modified</b></p> <p>Condition 10 is currently as follows:</p> <p><b><i>10B. Private open space of Dwelling 5</i></b></p> <p><i>The dividing fence between Dwelling 4 and 9 is to be 1.8m in height.</i></p> <p><i>Reason: To provide visual privacy between the two adjacent areas of private open space.</i></p> <p>The condition incorrectly refers to Dwelling 4. As the fence is between Dwellings 5 and 9 the condition should be amended to refer to Dwelling 5 not Dwelling 4 as follows:</p> <p><b><i>10B. Private open space of Dwelling 5</i></b></p> <p><i>The dividing fence between Dwelling 5 and 9 is to be 1.8m in height.</i></p> <p><i>Reason: To provide visual privacy between the two adjacent areas of private open space.</i></p>
<p>34. Tree removal within this property</p>	<p><b>Condition to be modified</b></p> <p>Condition 34 is to be modified to include Tree 24 as a tree that can be removed as it is a dead tree.</p>

## 4.0 STATUTORY PLANNING FRAMEWORK

### 4.1 Environmental Planning & Assessment Act 1979

Section 4.55(8) provides that where the Land & Environment Court has issued a consent, the Court is enabled to also modify that consent, but that the functions imposed on a consent authority under subsection (1A)(c) or subsection (2) (b) and (c) are still to be exercised by the relevant consent authority and not the Court. These functions relate to consultation with concurrence authorities and public notification.

Accordingly, the subject application is made to the Land & Environment Court to modify Development Consent DA/2019/1260 pursuant to Section 4.55(8) of the *Environmental Planning and Assessment Act 1979*.

The application is also lodged pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*. Section 4.55(2) empowers the Court to modify the development consent, as follows:

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 any period prescribed by the regulations or provided by the development control plan, as the case may be.

In accordance with section 4.55(2)(a) the proposal is appropriately categorised as being "substantially the same" for the following reasons:

- No change is proposed to the approved use of the development.
- No change is proposed to the number of dwellings on the site or the number of bedrooms within each dwelling. The additional floor area of 90.8 square metres has been distributed throughout the development to increase room sizes within the approved dwellings.
- No increase is proposed to the maximum height approved on the site. Minor adjustments to the RLs of the roof forms result in minor reductions to the overall height of each building.

- No change is proposed to the number of car parking spaces on the site.
- No change is proposed to the setback of the buildings from the front boundary.
- No change is proposed to the rear setback of the development (at the ground floor level).
- No change is proposed to the approved minimum side setbacks.
- The majority of the additions to the development occur over the basement (except the addition to the rear of Dwellings 3 and 8 and a small part of Dwellings 1 and 6). The changes therefore only result in a minor reduction to the deep soil area on the site of 18 square metres. Despite the reduction the development still exceeds the required deep soil area by 266 square metres or 11.95% of the site area.
- The development only results in a reduction of 13 square metres of landscaped area. The modified development exceeds the minimum required landscaped area by 21 square metres.
- The proposed modifications do not result in the removal of any additional existing trees other than Tree 24, which has been identified as a dead tree.

On this basis the proposal is appropriately categorised as being "substantially the same" as required by Section 4.55(2) of the EP&A Act.

In accordance with Section 4.55(3) of the EP&A Act 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 provisions of relevant environmental planning instruments and development control plans are relevant matters for consideration under Section 4.15(1) and are addressed in Sections 4.2, 4.3 and 4.4 of this Statement.

Section 4.55(3) also requires the consent authority to take into consideration the reasons given by the consent authority for the grant of consent that is sought to be modified. The proposed modifications do not alter any aspects of the proposal that are critical to the judgement for *Armada Avalon Pty Ltd v Northern Beaches Council* [2021] NSWLEC 1490. The judgement does however specifically address Condition 10 which is proposed to be modified under this application.

Paragraphs 141-143 of the judgement relate to Condition 10 which requires the schedule of colours and finishes to be amended and are as follows:

141 As stated earlier in the judgment at [84], the parties agreed that contentions as to the colours and finishes of the proposed development were capable of resolution by condition of consent.

142 The Respondent submits that amendments to the condition as proposed by the Applicant would result in the colour 'white' being used to excess, despite the agreement of the town planning experts that a darker colour scheme was preferred.

143 The Applicant seeks to extend the exemption on the use of white to the application of 'trims'. I note the condition proposed by the Council permits the colour 'white' to be applied to eave linings, window/door frames and balustrades. Considering the agreement reached between the experts, I accept that the Respondent's wording may more faithfully represent this agreement. The Respondent's preferred wording is adopted.

The Town Planning experts agreed that a darker colour scheme can be provided so that the development is recessive to the landscaping, and it was agreed that this is a matter that could be conditioned.

Whilst it was agreed that a darker colour scheme could be provided that would result in a development being recessive to the landscaping, the expert discussion did not address whether the provisions of the DCP specifically require the development to be recessive to the landscaping. This issue was not examined in detail during the hearing.

The desired future character statement for the Avalon Beach locality requires building colours and materials to harmonise with the natural environment (Section A4.1 of P21DCP).

The desired outcomes of the building colours and materials control in section D1.5 of P21DCP is as follows:

- The development enhances the visual quality and identity of the streetscape.
- To provide attractive building facades which establish identity and contribute to the streetscape.
- To ensure building colours and materials compliments and enhances the visual character its location with the natural landscapes of Pittwater.
- The colours and materials of the development harmonise with the natural environment.
- The visual prominence of the development is minimised.
- Damage to existing native vegetation and habitat is minimised.
- An informal beachside appearance of the Avalon Beach Village.

The application seeks to delete condition 10 to allow for a colour scheme that consists of a mix of beige, light grey, monument and natural white. The colour scheme is compatible with the proposed sandstone paving and stone walls.

Despite the lighter colours proposed, the proposed colours harmonise with the natural environment and the development is consistent with the desired outcomes of the control in that:

- The proposed light external colour scheme is entirely compatible with the light colours typical of the natural environment of the nearby beach and coastline. The schedule of materials includes natural materials such as stone walls and sandstone paving which are a similar colour to natural materials found in a coastal environment. The proposed colours are consistent with the natural materials proposed. As such the proposed colours and materials harmonise with the natural environment. A darker colour scheme is more appropriate and necessary in heavily vegetated areas on the plateau and slopes where the development needs to blend in with the dark colours of the surrounding vegetation in order to reduce the visual impact of the development and protect the scenic qualities of the area.
- The lighter colours proposed will improve the environmental performance of the development by reducing heat absorption. In this regard the lighter colours proposed improve the environmental sustainability of the development and support the natural environment. The change to the colours is consistent with the State Government's proposal to ban dark roofs as part of its commitment to deliver more sustainable housing and reach its target of net zero emissions by 2050.
- The proposed colours are consistent with the light colours used on the majority of developments in the locality (particularly more recent developments) in the vicinity of the site including Nos 23, 26, 31, 34 North Avalon Road and the 'Drift' development at 4-6 Bangalley Way. Photographs of just some of the nearby developments with lighter colours are included in this Statement. As such the colours will be consistent with and enhance the visual quality and identity of the streetscape.
- Given the majority of developments in the street have a light external colour scheme, particularly the newer developments, the development will not appear as visually prominent in the streetscape.



Indeed, a dark colour scheme would appear as more jarring or unusual in the streetscape than a lighter development.

- The development incorporates substantial landscaping in the road reserve and front setback that will screen the development. The trees and landscaping in the road reserve exceeds the planting typically provided along North Avalon Road and as such, the development will be more heavily screened by landscaping than other lighter coloured developments in the vicinity of the site.

For these reasons, the darker colour scheme required by Condition 10 is not necessary in order to achieve compliance with the relevant provisions of P21DCP and condition 10 should be deleted.

#### 4.2 Environmental Planning and Assessment Regulation 2021

Clause 100 of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation) sets out the information which must be provided with an application for the modification of a development consent.

The following table summarises how the requirements of clause 100(1) have been addressed in the application documentation.

Clause 100(1) Requirement	Comment
(a) the name and address of the applicant,	Provided at lodgement.
(b) a description of the development that will be carried out under the development consent,	Section 3.1 outlines the development that was approved and section 3.2 details the proposed modifications.
(c) the address and folio identifier of the land on which the development will be carried out,	As detailed in section 2 of this Statement, the site is known as 27-29 North Avalon Road, Avalon Beach and the site is legally described as Lot 32 DP 8394 and Lot 33 DP 8394.
(d) a description of the modification to the development consent, including the name, number and date of plans that have changed, to enable the consent authority to compare the development with the development originally approved,	Sections 3.2 and 3.4 of this Statement detail the proposed modifications and includes the number, number and date of plans that have changed.
(e) whether the modification is intended to— (i) merely correct a minor error, misdescription or miscalculation, or (ii) have another effect specified in the modification application,	Addressed in section 4.1 of this Statement.
(f) a description of the expected impacts of the modification,	Addressed in sections 4.1, 4.3 and 4.4 of this Statement.
(g) an undertaking that the modified development will remain substantially the same as the development originally approved,	Addressed in section 4.1 of this Statement.
(h) for a modification application that is accompanied by a biodiversity development assessment report—	Not applicable.

Clause 100(1) Requirement	Comment
the biodiversity credits information,	
(i) if the applicant is not the owner of the land—a statement that the owner consents to the making of the modification application,	Owner's consent accompanies the application.
(j) whether the modification application is being made to— (i) the Court under the Act, section 4.55, or (ii) the consent authority under the Act, section 4.56.	The application is being made to the court under section 4.55.

Clause 110(3) of the EP&A Regulation relates to the requirements for a BASIX certificate for modifications to a development consent under section 4.55(1A) or (2) of the Act. The application is made under section 4.55(2) of the Act and therefore an amended BASIX Certificate accompanies the application.

#### 4.3 Environmental Planning Instruments

##### 4.3.1 State Environmental Planning Policy (Housing) 2021

State Environmental Planning Policy (Housing) 2021 commenced on 26 November 2021. Clause 10(2) of SEPP (Housing) 2021 repeals *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

The savings and transitional provisions are found in Schedule 7A of SEPP Housing and are as follows:

- (1) This Policy does not apply to the following matters—
  - (a) a development application made, but not yet determined, on or before the commencement date,
  - (b) a concept development application made, but not yet determined, on or before the commencement date,
  - (c) a staged development application made subsequent to a concept development application approval granted on or before the commencement date,
  - (d) a development consent granted on or before the commencement date,
  - (e) an environmental impact statement prepared in compliance with an environmental assessment requirement that is—
    - (i) issued by the Planning Secretary on or before the commencement date, and
    - (ii) in force when the statement is prepared,
  - (f) the carrying out of an activity after the commencement date if—
    - (i) notice of the activity has been given to the council under the repealed ARH SEPP, clause 40A(2), and

(ii) an approval required under the Act, Part 5 for carrying out the activity is granted by the determining authority before 26 November 2022.

(2) The provisions of a repealed instrument, as in force immediately before the repeal of the repealed instrument, continue to apply to a matter referred to in subsection (1).

The savings and transitional provisions clearly state that the Policy does not apply to a development consent granted or made before the commencement date and the provisions of a repealed instrument continue to apply. As development consent was granted on 26 August 2021, prior to the commencement date of SEPP (Housing) 2021, the provisions of SEPP (Housing) 2021 are not applicable to the modification application and the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 are addressed in section 4.3.2 below.

#### **4.3.2 State Environmental Planning Policy (Housing for Seniors of People with a Disability) 2004**

State Environmental Planning Policy (Housing for Seniors of People with a Disability) 2004 applies to the site and the approved development. The approved development is for a seniors housing development consisting of ten (10) in-fill self-care housing dwellings.

Chapter 1 of the SEPP sets out preliminary requirements for seniors housing developments such as the land to which the policy applies. Chapter 2 sets out key concepts relevant to the Policy. The proposed modifications do not alter the development's compliance with Chapters 1 or 2 of the SEPP.

Chapter 3 of the SEPP permits seniors housing on the site if the development is carried out in accordance with the Policy.

The remainder of this section of the Statement addresses the proposal's consistency with the provisions of Chapter 3 that are relevant to the modification application.

##### [Design of in-fill self-care housing](#)

Clause 31 provides that in determining a development application for development for the purposes of in-fill self-care housing, a consent authority must consider the Seniors Living Policy: Urban Design Guideline for Infill Development, March 2004, published on the Department's website. The proposed modification does not alter the proposal's consistency with the design guidelines.

##### [Design Principles](#)

Clause 32 of SEPP HSPD provides that a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2. The principles were taken into consideration in the assessment of the development application. The following table provides commentary on the consistency of the modifications with the design principles.

Division 2 Design Principles	Proposed Modifications
<p><b>33 Neighbourhood amenity and streetscape</b> The proposed development should—</p>	<p>The proposed additions to the two buildings on the northern side of the site are located to the rear of each building and will not result in</p>

Division 2 Design Principles	Proposed Modifications
<p>(a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and</p> <p>(b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and</p> <p>(c) maintain reasonable neighbourhood amenity and appropriate residential character by—</p> <p>(i) providing building setbacks to reduce bulk and overshadowing, and</p> <p>(ii) using building form and siting that relates to the site's land form, and</p> <p>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and</p> <p>(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and</p> <p>(d) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and</p> <p>(e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and</p> <p>(f) retain, wherever reasonable, major existing trees, and</p> <p>(g) be designed so that no building is constructed in a riparian zone.</p>	<p>any impact on the streetscape.</p> <p>Views of the addition to Dwelling 9 from North Avalon Road will be screened by the building in the north-west corner of the site.</p> <p>The addition on the western side of Dwelling 5 is setback 45 metres from the northern boundary and will be screened by landscaping to the north of Dwelling 5 and the walkway between the two buildings on the northern side of the site. The addition will therefore have little to no impact on the streetscape of North Avalon Road.</p> <p>The proposed modifications will not result in any significant additional shadowing of the adjoining properties as shown by Drawings 910, 911 and 912 prepared by Enviroana Studio. The adjoining properties will continue to receive solar access to the living rooms and principal area of private open space on 21 June.</p>
<p><b>34 Visual and acoustic privacy</b></p> <p>The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by—</p> <p>(a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and</p> <p>(b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.</p>	<p>The proposed additions to the rear of Dwellings 6 and 8 and minor reduction in the separation between Dwellings 6 and 10 and Dwellings 4 and 8 from approximately 11.6 metres to 10 metres, will not result in an adverse privacy impact on the residents of Dwellings 6 and 10 or Dwellings 4 and 8 given a privacy screen is proposed for the window of bedroom 1 in Dwellings 6 and 8 (as was provided on the approved bedroom window) and landscaping is proposed between the two</p>

Division 2 Design Principles	Proposed Modifications
	buildings.
<p><b>35 Solar access and design for climate</b></p> <p>The proposed development should—</p> <p>(a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and</p> <p>(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.</p>	<p>The development complies with the solar access requirements of the SEPP despite the proposed modifications. The adjoining properties will retain adequate solar access.</p>
<p><b>36 Stormwater</b></p> <p>The proposed development should—</p> <p>(a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and</p> <p>(b) include, where practical, on-site stormwater detention or re-use for second quality water uses.</p>	<p>The proposed modifications do not alter the approved stormwater design. A letter prepared by ACOR Consultants accompanies the application which states the following:</p> <p style="padding-left: 40px;"><i>We have reviewed the abovementioned modifications in relation to the following documents:</i></p> <ul style="list-style-type: none"> <li>• <i>Stormwater Management and PMF Flood Mitigation Plans prepared by ACOR Consultants (CC) Pty Ltd plans reference CC200310, Sheets C1 – C6, Revision B, dated 22 September 2020.</i></li> </ul> <p style="padding-left: 40px;"><i>As a consequence of our review, we have formed the opinion that the proposed modifications to the building footprint and paving area of a minor nature which will not impact on the design outcomes identified in the abovementioned documents.</i></p> <p><i>Accordingly, we see no reason to revise the abovementioned documents in support of the modification.</i></p>
<p><b>37 Crime prevention</b></p> <p>The proposed development should provide personal property security for residents and visitors and encourage crime prevention by—</p> <p>(a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and</p> <p>(b) where shared entries are required, providing</p>	<p>No changes are proposed that would reduce the safety and security of residents and visitors.</p>

Division 2 Design Principles	Proposed Modifications
shared entries that serve a small number of dwellings and that are able to be locked, and  (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	
<b>38 Accessibility</b> The proposed development should—  (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and  (b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.	No changes are proposed to the pedestrian links to public transport services or local facilities.  No change is proposed to the environment for pedestrians and motorists.
<b>39 Waste management</b> The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	Clause 105 requires seniors housing to include waste facilities that maximum recycling by the provision of appropriate facilities. The application includes a minor adjustment to the location and configuration of the waste collection pad. The modification will maintain an appropriate waste collection facility on the site.

#### Development standards

A consent authority must not consent to a development application made pursuant to the Chapter unless the proposed development complies with the standards specified in clause 40. The following table summarises the proposal's compliance with the requirements of clause 40.

Clause	Requirement	Proposal
Clause 40(2) Site Size	Min 1,000 m <sup>2</sup>	No change. The site has a total area of 2,226 square metres.
Clause 40(3) Site frontage	Min 20 metres at the building line	No change. The site has a frontage of 36.58 metres.
Clause 40(4)(a) Height	8 metres or less (measured from natural ground level to the ceiling on the topmost floor)	The proposed additions to the approved development comply with this requirement.
Clause 40(4)(b)	A building adjacent to a boundary of the site must not be more than 2 storeys in height	The proposed additions to the approved development comply with this requirement.
Clause 40(4)(c)	A building located in the rear	The modified proposal complies with

Clause	Requirement	Proposal
	25% area of the site must not exceed 1 storey in height	this requirement as shown on Drawing 103.

#### Self-Contained dwellings

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

The proposed modifications comply with the standards in Schedule 3 for self-contained dwellings.

Condition 49 requires a suitably qualified and accredited Access Consultant to provide written certification that the as-built development has been constructed and fit-out to ensure compliance with the recommendations of the approved Access Report referenced in Condition 1 of this consent and the standards prescribed by Schedule 3 (Standards concerning accessibility and useability for hostels and self-contained dwellings) of State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 that relate to self-contained dwellings. No changes are proposed to condition 49.

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

Pursuant to clause 50 a consent authority must not refuse consent to a development application made pursuant to the SEPP on any of the grounds listed in the clause if the associated requirement is met. The following table identifies each of the grounds listed in clause 50 and details the proposal's compliance with the SEPP requirements.

Clause	Requirement	Proposal
Clause 50(2) Building Height	Maximum 8 metres (measured from ground level to the ceiling on the topmost floor)	The development has a height of less than 8 metres to the ceiling on the topmost floor as shown on the elevations.
Clause 50(b) Density and Scale	Maximum of 0.5:1	Based on a site area of 2,226 square metres, the maximum GFA is 1,113 square metres.  The approved development has a complying FSR of 0.5:1 (1,113 square metres).  The modified development has a GFA of 1,203.4 square metres which equates to an FSR of 0.54:1. The proposed variation of 90.4 square metres or 8.12%  Despite the proposed variation the modified development does not result in any significant or unreasonable impacts on the streetscape or the amenity of the surrounding properties having regard to the careful placement of the additional

Clause	Requirement	Proposal
		<p>floor space predominantly to the rear of the buildings and over the basement and the distribution of the floor space throughout the development rather than the concentration of the additional floor space in a particular location.</p> <p>The additional floor area does not create any additional dwellings or bedrooms. The additional floorspace is distributed throughout the development to increase room sizes and provide a higher level of amenity for occupants. In this regard the additional floor space does not increase the number of occupants within the development and does not generate additional demand for car parking nor does it place additional demands on local infrastructure.</p> <p>The development exceeds the deep soil area and landscaped open space calculations despite the additional floor space proposed.</p> <p>For these reasons, the modified development remains consistent with the existing and desired future character of the locality and requiring compliance with the standard is unreasonable and unnecessary in this instance.</p>
Clause 50(c) Landscaped area	Minimum of 30% of the site area (667.8m <sup>2</sup> )	<p>The approved landscape area is 31.851% (702 square metres).</p> <p>The modified development has a complying landscape area of 30.97% or 689.4 square metres.</p>
Clause 50(d) Deep soil zones	15% of the site area (333.9m <sup>2</sup> ). 2/3 of the deep soil area (222.6m <sup>2</sup> ) should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3 metres.	<p>The approved deep soil area is 30.413% of the site area (618 square 27.763 metres).</p> <p>The modified development has a complying deep soil area of 609.7 square metres or 27.39% of the site area.</p>
Clause 50(e) Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct	The sun's eye diagrams prepared by Environa Studio (Drawings 918 and 919 Revision C dated 14 February 2022) demonstrate that the private open space of each dwelling will receive at least 2



Clause	Requirement	Proposal
	sunlight between 9am and 3pm in mid-winter.	hours of solar access on 21 June.  Despite the proposed modifications, an accessible area of the private open space of dwellings 1, 2, 3, 5, 6, 7 and 8 (70% of dwellings) will receive 2 hours of solar access to the private open space on 21 June and the area of private open space identified in condition 10A will continue to receive adequate solar access.  Dwellings 1, 2, 3, 5, 6, 7, 8 & 10 will receive 2 hours of solar access to the living room windows on 21 June as shown by the sun's eye diagrams.
Clause 50(f) Private open space for in-fill self-care housing	Ground level dwellings – not less than 15m <sup>2</sup> per dwelling - one area is not be less than 3m x 3m and accessible from a living area.  Dwellings above ground floor – 10 square metres that is not less than 2 metres in either length or depth and that is accessible from a living area.	The proposed modifications do not alter compliance with this requirement.
Clause 50(g) repealed	N/A	
Clause 50(h) Parking	At least 0.5 spaces for each bedroom	No changes are proposed to the number of bedrooms within the development.

#### 4.3.1 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the development and aims to encourage sustainable residential development.

An amended BASIX certificate prepared by Efficient Living accompanies the application and demonstrates that the proposal achieves compliance with the BASIX water, energy and thermal efficiency targets.

#### 4.3.2 Pittwater Local Environmental Plan 2014

The proposed amendments do not raise any issues of substance for further consideration with respect to the provisions of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

#### 4.4 Pittwater 21 Development Control Plan

The provisions of the Pittwater 21 Development Control Plan (P21DCP) relevant to the proposed modifications are addressed below.

##### Locality Statement

The subject site is located within the Avalon Beach locality as identified on the Pittwater 21 Locality Map and the Avalon Beach Locality Map. The Desired Character of the locality is described in Part A4.1 of the DCP.

The most important desired future character is that Avalon Beach will continue to provide an informal relaxed casual seaside environment. The locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancies will be located on the valley floor and lower slopes that have less tree canopy coverage, species and habitat diversity, fewer hazards and other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, commercial, community and recreational facilities will serve the community.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport. Vehicular and pedestrian access into and through the locality is good. Pedestrian links, joining the major areas of open space (Angophora Reserve, Stapleton Park and Hitchcock Park) and along the foreshores, should be enhanced and upgraded. Similarly, cycle routes need to be provided through the locality. Carparking should be provided on site and where possible integrally designed into the building.

Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with development. The objective is that there will be houses amongst the trees and not trees amongst the houses.

Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

Most houses are set back from the street with low or no fencing and vegetation is used extensively to delineate boundary lines. Special front building line setbacks have been implemented along Avalon Parade to maintain the unique character of this street. This, coupled with the extensive street planting of canopy trees, gives the locality a leafy character that should be maintained and enhanced.

The design, scale and treatment of future development within the Avalon Beach Village will reflect the 'seaside-village' character of older buildings within the centre, and reflect principles of good urban design. External materials and finishes shall be natural with smooth shiny surfaces avoided. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors. The natural landscape of Careel Bay, including seagrasses and mangroves, will be conserved. Heritage items and conservation areas indicative of early settlement in the locality will be conserved, including the early subdivision pattern of Ruskin Rowe.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

The modified development remains consistent with the desired future character of the locality in that:

- The modified development does not result in any significant or unreasonable impacts on the streetscape or the amenity of the surrounding properties having regard to the careful placement of the additional floor space predominantly to the rear of the buildings and over the basement, and the distribution of the floor space throughout the development, rather than the concentration of the additional floor space in a particular location. No changes are proposed to the front setback of the development and the proposed additions do not reduce the approved minimum side or rear setbacks.
- The distribution of the additional floor area throughout the development and the consistency of the modified development with the approved setbacks, allows for the landscaped setting of the development to be maintained, despite the proposed modifications. The modifications do not result in a significant reduction in the approved landscaped area or deep soil zone on the site, as the proposed additions are predominately located above the basement car park. The development exceeds landscaped area required by SEPP HSPD and SEPP (Housing) 2021 and provides almost double the required area of deep soil. As such, the development maintains an

appropriate balance between maintaining the landforms, landscapes and other features of the natural environment, and the development of land.

- The modifications do not require the removal of any additional existing trees (other than Tree 24 which is a dead tree) thus ensuring that the development will continue to sit below the existing tree canopy.
- The scale of the approved development as viewed from the public domain is generally unchanged by the proposed modifications. The development will therefore continue to sit below the tree canopy level.
- The external colours are consistent with the lighter colours that naturally occur in the local coastal environment and the development incorporates natural materials such as stone walls and timber elements. As such the proposed colours and materials harmonise with the natural environment.
- The proposed deletion of condition 10 seeks to provide a lighter colour scheme that is consistent with development in the locality (particularly more recent developments). The majority of dwellings in the vicinity of the site are light coloured and or have light coloured roofs. Photographs 1-8 show just some of the dwellings in Avalon Parade with light colours and the seniors living development known as 'Drift' at 4-6 Bangalley Way.

Photograph 1:

34 North Avalon Road



Photograph 2:

31 North Avalon Road

Photograph 3:

25 North Avalon Road



Photograph 4:

23 North Avalon Road

Photograph 5:

26 North Avalon Road





Photograph 6:

10 North Avalon Road



Photograph 7:

5 North Avalon Road



Photograph 8:

4-6 Bangalley Way

#### General Controls

The proposed modifications to the building footprint and paving do not require changes to the Stormwater Management and Flood Mitigation Plans prepared by ACOR. The development remains consistent with the requirements of Section B5 of P21DCP.

### Development Tyle Controls

The following table summarises the proposed development's compliance with the general controls for residential development found in Section C1 of P21DCP.

Control	Comment
C1.1 Landscaping	<p>The application is accompanied by an amended landscape plan prepared by John Lock and Associates.</p> <p>The modified development remains compliant with the deep soil and landscaped area requirements of the SEPP as the additional floor space is predominately proposed over the basement.</p>
C1.2 Safety and Security	<p>The proposed modifications do not alter the proposal's compliance with the provisions of clause 1.2.</p>
C1.3 View Sharing	<p>Pursuant to clause C1.3 all new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.</p> <p>The modified building footprint and building envelope will not result in any loss of views nor will it significantly alter the outlook from the surrounding properties given the modifications generally occur between the front and rear rows of dwellings and between Dwellings 5 and 9.</p>
C1.4 Solar Access	<p>In accordance with clause C1.4 the main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on 21st June. Windows to the principal living areas of the proposal and windows to the principal living area of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on 21st June to at least 50% of the glazed area.</p> <p>The shadow diagrams prepared by Environa Studio (Drawing 910) demonstrate the proposal will result in minimal overshadowing of the adjoining properties on 21<sup>st</sup> June and that the adjoining properties will maintain 3 hours of solar access to the main living area and private open space on 21 June.</p> <p>Pursuant to clause 50(e) of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 if living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter. The proposal complies with the requirements of the SEPP as detailed in sections 4.3.1 and 4.3.2 of this Statement.</p>
C1.5 Visual Privacy	<p>Pursuant to clause C1.5 private open space, recreation areas and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9m by building layout, landscaping, screening devices or greater spatial separation. Elevated decks, verandas and balconies should incorporate privacy screens where necessary and should, where possible, be located at the front or rear of the building.</p> <p>The proposed modifications to the windows on the east, south and west elevations will not result in any unreasonable privacy impacts on the surrounding properties.</p> <p>No new elevated decks or verandas are proposed.</p>

Control	Comment
	A minimum distance of separation of approximately 10.4 metres is proposed between the front and rear dwellings and screening devices are also proposed on the bedroom windows of Dwellings 6 and 8.
C1.6 Acoustic Privacy	The proposed modifications will not result in any significant change to the acoustic privacy of residents within the development or the acoustic privacy of residents of the surrounding properties.
C1.7 Private Open Space	Pursuant to clause 50(f) of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 on the grounds of private open space if the development complies with the standard set in the SEPP. The proposed development complies with the private open space requirements of the SEPP.
C1.9 Adaptable Housing and Accessibility	The modified development complies with the accessibility requirements of the SEPP as required by Condition 49.
C1.10 Building Facades	The DCP requires building facades to not contain any stormwater, sewer, gas, electrical or communication service pipe or conduit that is visible from a public place. No change is proposed to the development's compliance with this requirement.
C1.21 Seniors Housing	The modified development will be in keeping with the development of the surrounding area in regard to bulk, height, scale and character as detailed elsewhere in this report.
C1.23 Eaves	The proposed modifications do not alter the eaves of the buildings.

#### 4.4.1 Locality Specific Controls

The subject site is located in the Avalon Beach Locality. The modified development's performance against the relevant locality specific controls is discussed below.

Control	Comment
D1.1 Character as View from a Public Place	The elements of the buildings that are to be modified will have limited visibility from a public place and will not result in an adverse streetscape outcome as detailed in this report.
D1.4 Scenic Protection General	The proposed modifications will not result in any significant impact on the natural environment when viewed from the road with the only change in the front setback relating to the configuration of the waste collection pad and fire hydrant booster. The development will not be visible from any waterway or public reserve.
D1.5 Building colours and materials	D1.5 of the DCP requires external colours and materials to be dark and earthy tones. White, light colour, red or orange roofs and walls are not permitted.  The desired outcomes of the control are: <ul style="list-style-type: none"> <li><i>The development enhances the visual quality and identity of the</i></li> </ul>



Control	Comment
	<p><i>streetscape.</i></p> <ul style="list-style-type: none"> <li><i>To provide attractive building facades which establish identity and contribute to the streetscape.</i></li> <li><i>To ensure building colours and materials compliments and enhances the visual character its location with the natural landscapes of Pittwater. The colours and materials of the development harmonise with the natural environment.</i></li> <li><i>The visual prominence of the development is minimised.</i></li> <li><i>Damage to existing native vegetation and habitat is minimised.</i></li> <li><i>An informal beachside appearance of the Avalon Beach Village.</i></li> </ul> <p>The application seeks to delete Condition 10 to allow for the schedule of colours and materials to be lighter colours including 'white duck' external walls, shale grey roofing, natural white window frames, trims, shutters and balustrades and 'surfmist' coloured metalwork, gutters, downpipes and awnings.</p> <p>Despite the lighter colours proposed, the development is consistent with the desired outcomes of the control in that:</p> <ul style="list-style-type: none"> <li>The proposed light external colour scheme is entirely compatible with the light colours typical of the natural environment of the nearby beach and coastline. The schedule of materials includes natural materials such as stone walls and sandstone paving which are a similar colour to natural materials found in a coastal environment. The proposed colours are consistent with the natural materials proposed. As such the proposed colours and materials harmonise with the natural environment. A darker colour scheme is more appropriate and necessary in heavily vegetated areas on the plateau and slopes where the development needs to blend in with the dark colours of the surrounding vegetation in order to reduce the visual impact of the development and protect the scenic qualities of the area.</li> <li>The lighter colours proposed will improve the environmental performance of the development by reducing heat absorption. In this regard the lighter colours proposed improve the environmental sustainability of the development and support the natural environment. The change to the colours is consistent with the State Government's proposal to ban dark roofs as part of its commitment to deliver more sustainable housing and reach its target of net zero emissions by 2050.</li> <li>The proposed colours are consistent with the light colours used on the majority of developments in the locality (particularly more recent developments) in the vicinity of the site including Nos 23, 26, 31, 34 North Avalon Road and the 'Drift' development at 4-6 Bangalley Way. Photographs 1-8 show some of the nearby developments with lighter colours. As such the colours will be consistent with and enhance the visual quality and identity of the streetscape.</li> <li>Given the majority of developments in the street have a light external colour scheme, particularly the newer developments, the development</li> </ul>

Control	Comment
	<p>will not appear as visually prominent in the streetscape. Indeed, a dark colour scheme would appear as more jarring or unusual in the streetscape than a lighter development.</p> <ul style="list-style-type: none"> <li>The development incorporates substantial landscaping in the road reserve and front setback that will screen the development. The trees and landscaping in the road reserve exceeds the planting typically provided along North Avalon Road and as such, the development will be more heavily screened by landscaping than other lighter coloured developments in the vicinity of the site.</li> </ul>
D1.9 Side and Rear Building Line	<p>The proposed setbacks are unchanged, the modifications only alter the position of the elements of the building that are setback 2.4 metres from the side boundary (moving them further south, away from North Avalon Road). No change is proposed to the rear building line, other than a minor reduction of the setback of Level 2 to the rear boundary. The modifications do not alter the development's compliance with the objectives of the side and rear building line control.</p>
D1.11 Building Envelope	<p>In accordance with D1.11 a multi-unit housing development must be sited within an envelope determined by projecting planes at 45 degrees from a height of 4.2 metres above natural ground level at the side boundaries to the maximum height. Where subject to flood hazard the building envelope shall be measured from a height above the minimum floor level requirements under the flood hazard controls. For development other than residential flat buildings and multi-dwelling housing planes are to be projected at 45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries to the maximum building height.</p> <p>The proposed modifications comply with the building envelope control. For the building containing Dwelling 1 and 6, the envelope is to be measured from the required PMF floor level requirements.</p>
D1.13 Landscaped Area	<p>Pursuant to Part D1.13 the total landscaped area on land zoned R2 Low Density Residential shall be 50% of the site area.</p> <p>The landscaping and deep soil zone provisions within clause 50 of SEPP HSPD prevail. The approved and modified development exceeds the minimum landscaping and deep soil requirements of the SEPP, providing almost double the required deep soil area. The quantum of landscaping proposed and the distribution of the landscaped areas provide a quality landscaped setting for the development and result in a development that is compatible with the landscaped character of the locality.</p>

## 5.0 CONCLUSION

This submission has been prepared as supporting documentation for an application made pursuant to Section 4.55(8) and Section 4.55(2) of the Environmental Planning and Assessment Act 1979 to modify the consent for Development Application DA2019/1260.

The application proposes relatively minor modifications and additions to each of the four buildings to improve the internal layout and amenity of the dwellings within the development. Minor external changes are proposed including changes to window sizes, adjustments to the position of the hot water units and heat pumps, updates to the schedule of colours and finishes and the reconfiguration of the waste collection pad.

The amended proposal retains the fundamental components of the approved development with no changes proposed to the number of dwellings or bedrooms within the development, no change to the number of car parking spaces within the development and only minor changes to the footprint of the development, based on the setbacks established by the approved development.

The proposed additions will have no adverse impact on the streetscape as the modified elements of each building are located behind the front building line and within the approved side and rear setbacks. The development does not result in any significant reduction of the landscaped area or deep soil zone within the development and the proposal remains compliant with the applicable landscaped open space and deep soil area requirements. The amended proposal does not require the removal of any additional trees other than Tree 24 which has been identified as a dead tree.

The proposed modifications do not result in any significant or non-complying impacts on the amenity of the adjoining properties.

As detailed in this submission the proposed modifications may be made by the consent authority in accordance with Section 4.55(8) and 4.55(2) of the Environmental Planning and Assessment Act 1979. The proposal is substantially the same development as originally approved and will not result in any unreasonable impacts on the amenity of the locality.