

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2022/0397
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<b>Responsible Officer:</b>	Anne-Marie Young
<b>Land to be developed (Address):</b>	Lot 33 DP 8394, 29 North Avalon Road AVALON BEACH NSW 2107 Lot 32 DP 8394, 27 North Avalon Road AVALON BEACH NSW 2107
<b>Proposed Development:</b>	Modification of Development Consent DA2019/1260 granted for Demolition works and construction of a Seniors Housing development comprising 10 self contained dwellings and site consolidation
<b>Zoning:</b>	R2 Low Density Residential
<b>Development Permissible:</b>	Yes, under Yes, under SEPP Housing for Seniors or People with a Disability (HSPD) 2004
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	Yes
<b>Owner:</b>	Armada Avalon Pty Ltd
<b>Applicant:</b>	Armada Avalon Pty Ltd

<b>Application Lodged:</b>	21/07/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	27/07/2022 to 10/08/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	6
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

This application seeks consent to modify Development Consent No. DA2019/1260 granted by the Land and Environment Court for a Seniors Housing Development comprising 10 self-contained dwellings and site consolidation.

The application seeks consent for a 90.4sqm increase in the approved Gross Floor Area (GFA) resulting in an increase in the internal floor area / FSR from 1,113sqm / FSR 0.5:1 to 1203.4sqm / FSR

0.54:1. The application also includes internal changes to the dwellings, external changes to the proportions of windows, addition of awnings, changes to the external colours and the removal of a tree (Tree No. 24).

The application is referred to the Development Determination Panel (DDP) due to 6 (six) submissions having been received.

Concerns raised in the objections predominantly relate to the increase in the bulk and scale of the development and visual impacts on the character of the locality and as observed from neighbouring properties. In addition, issues have been raised in relation to the removal of Tree T24 and the process of lodging a modification application resulting in an incremental increase in the scale of the development. The submissions also raised a concern that the application is not substantially the same as the original approved development.

The subject application has been assessed in accordance with SEPP (Housing) 2021 as SEPP HSPD has been repealed. The proposal results in an FSR of 0.54:1 and is inconsistent with the 0.5:1 FSR prescribed in SEPP Housing 2021. It is noted that there is no mechanism for the consideration of a Clause 4.6 variation to the FSR development standard as the application is a modification application. Irrespective of this, the additional floor space does not preclude the application from needing to meet the design principles set out in Division 6 of SEPP Housing.

On merit, the modified proposal will have no greater impact on the character of the locality or have any unreasonable amenity impacts on neighbours in terms of privacy or solar access. In this regard, the proposal is consistent with Clause 106 of SEPP (Housing), in respect of the the interrelationship of the non-discretionary standards and the design principles set out in Division 6.

The application is supported with an arboricultural report that confirms that Tree 24 is dead. Council's Landscape Officer has no objections to the removal of the tree and the proposal generally, subject to a condition requiring the replacement planting with a small local native tree.

This report concludes with a recommendation that the DPP grant approval to the application, subject to the recommended conditions.

## **PROPOSED DEVELOPMENT IN DETAIL**

The application seeks consent to modify Development Consent No. DA2019/1260 granted by the Land and Environment Court on 26 August 2021, in *Armada Avalon Pty Ltd v Northern Beaches Council* (2021) NSWLEC 1490 (Proceedings Number 2019/404226).

The application seeks consent for a 90.4sqm increase in the approved Gross Floor Area (GFA) of the approved development resulting in an increase in the internal floor area / FSR from 1,113sqm/FSR 0.5:1 to 1203.4sqm/FSR 0.54:1. The modification application also includes internal changes to the dwellings, external changes to the proportions of windows, addition of awnings, changes to the external colours and the removal of a tree (No. 24).

Specifically, the application includes the following modifications:

### **Basement Level**

- Reconfiguration of the waste room.

### **Ground Floor and First Floor Level**

- Increase in the floor area of Dwellings 1 and 3 (at ground level) and 6, 7 and 8 (on the upper level). The dwellings extend an additional 1.4m to the rear (south).
- Increase in the floor area of Dwelling 2 at ground level. The dwelling extends an additional 1.65m to the rear (south).
- Increase in the floor area of Dwellings 5 and 9. Dwelling 5 extended an addition 460mm to the west and Dwelling 9 extended an additional 460mm to the east.
- Increase in the floor area of the upper floor Dwellings 4, 5, 9 and 10. The dwellings extend an additional 900mm to the rear (south).

## External Changes

- Modification of the external colours and finishes as detailed below:
  - o Weatherboard approved Dulux 'Grey Daze, proposed colour – "White Duck'
  - o Metalwork approved Colourbond 'Windspray" except for the North Avalon Road facade
  - o Roofing – approved Colorbond 'Woodland Grey, proposed colour "Shale Grey'
  - o External wall feature approved Monument, proposed Dulux 'Stoney Creek half'
- Modification in the proportions of windows and a change in the position of skylights
- Addition of awnings to Dwellings 4, 5, 9 and 10.
- Air condition units updated.
- Modification of the roof over the central stairwell.
- The addition of a planter bed and garden bed on the eastern side of Dwelling 9.
- Removal of Tree No. 24.
- 12.6sqm reduction in approved landscape area from 702sqm or 31.5% to 689.4sqm or 30.97%.
- 8.3sqm reduction in the approved deep soil area from 618sqm or 27.7% to 609.7sqm or 27.3%

## Changes to Conditions

- Amend Condition 1a to update the approved plans and supporting documents.
- Deletion of Condition 10(c) Amended Schedule of Colours and Finishes to allow the approval of the amended materials and finishes schedule as detailed above.
- Modify Condition 10B Private Open Space of Dwelling 5 to correctly reference Dwelling 5.
- Modify Condition 34 to include Tree No. 24 for removal

## ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest

- groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

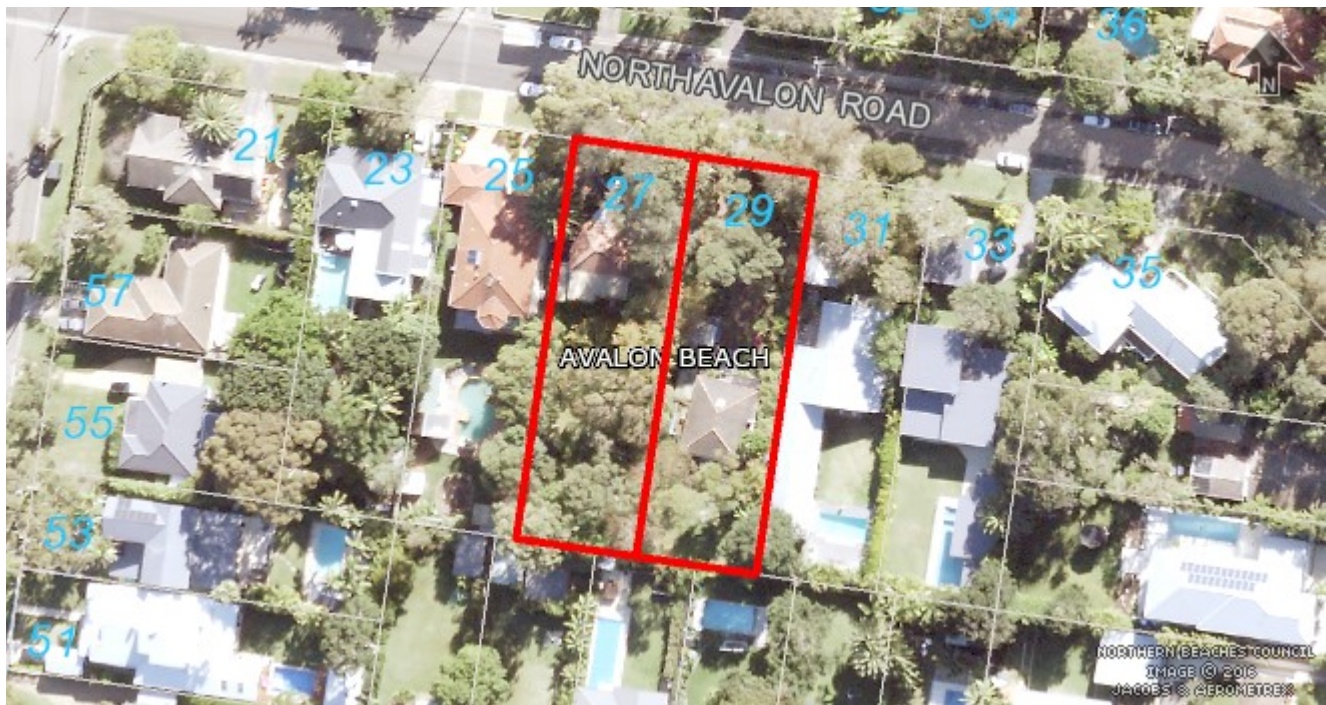
## SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S4.15 Assessment  
 Pittwater 21 Development Control Plan - D1.5 Building colours and materials

## SITE DESCRIPTION

<b>Property Description:</b>	<p>Lot 33 DP 8394 , 29 North Avalon Road AVALON BEACH NSW 2107          Lot 32 DP 8394 , 27 North Avalon Road AVALON BEACH NSW 2107</p>
<b>Detailed Site Description:</b>	<p>The site comprises two (2) lots and is legally identified as Lot 32 DP 8394, known as 27 North Avalon Road and Lot 33 DP 8394, known as No. 29 North Avalon Road. The site is located within the R2 Low Density Residential zone pursuant to the Pittwater Local Environmental Plan 2014 and the site contains two single dwelling houses with an attached single garage at No. 27 and an attached carport at No. 29. A drainage easement extends from the north-east to the southwest side of the site and runs behind the dwelling on No. 27 and in front of the dwelling on No. 29.</p> <p>The site is rectangular in shape with a combined frontage of 36.58m along North Avalon Road and a depth of 60.96m. The site has a surveyed area of 2,227m.</p> <p>The site has a fall from the rear (south) to the front (north) of the site of approximately 0.9m (1.5%) and from east to west of approximately 0.8m (2.29%). The site is identified as Low Risk Flood Prone Land. The site is not Bushfire Prone Land.</p> <p>Surrounding development consists of low density single residential dwellings all located on large lots, sited 'amongst the trees' with generous setbacks and open rear yards. Adjoining and surrounding development is characterised by predominantly one (1) and two (2) storey dwelling houses with a variety of roof forms and face brick, painted brick/render or weatherboard facades.</p>

Map:



## SITE HISTORY

On 26 February 2019, a Pre-Lodgement Meeting (**PLM2019/0021**) was held between the applicant and Council Officers to discuss a development for seniors housing on the subject site. Issues raised in the PLM notes from the meeting identify issues relating to streetscape character, building setbacks, building bulk, privacy and tree removal. The concluding comments from the meeting state:

*"Higher density development where permitted should maintain a "good fit" within the context of surrounding land to prevent outcomes that are "jarring" against the existing urban amenity and local residential character that popularises the surrounding streets / precinct."*

On 25 November 2019, Development Application No. **DA2019/1260** was lodged for demolition works and construction of a seniors housing development comprising ten (10) self-contained dwellings for seniors or people with a disability.

On the 12 August 2020 the DA was presented to the NBLPP who refused the application. The Minutes of the NBLPP meeting list the following reasons for refusal:

1. *The Panel is not satisfied that:*

1) *the applicant's written request under clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify contraventions of clause 26 and clause 40 under the SEPP (Housing for Seniors and People with a Disability) 2004 development standards has adequately addressed and demonstrated that:*

*a) compliance with the standards is unreasonable or unnecessary in the circumstances of the case; and  
b) there are sufficient environmental planning grounds to justify the contraventions.*

2) *the proposed development will be in the public interest because it is consistent with the objectives of the standards and the objectives for development within the zone in which the development is proposed to be carried out.*

2. Pursuant to Section 4.15(1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2014:

- Clause 26(2) Access
- Clause 29 Character
- Clause 31 Design of in-fill self-care housing
- Clause 32 Design of residential development
- Clause 33 Neighbourhood Amenity and streetscape
- Clause 34 Visual and Acoustic privacy
- Clause 36 Stormwater
- Clause 38 Accessibility
- Clause 39 Waste Management
- Clause 40 Building Height (rear 25%)

3. Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the Aims set out in Clause 1.2(b) of the Pittwater LEP 2014.

4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the Pittwater 21 Development Control Plan:

- Clause A4.1 Avalon Beach Locality
- Clause B4.22 Preservation of Trees and Bushland Vegetation
- Clause B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land
- Clause B5.9 Stormwater Management
- Clause B6.1 Access Driveways
- Clause B5.10 Stormwater Discharge into Public Drainage System
- Clause B5.12 Stormwater Drainage Systems and Natural Watercourses
- Clause B6.2 Internal Driveways
- Clause C1.1 Landscaping
- Clause C1.5 Visual Privacy
- Clause C1.6 Acoustic Privacy
- Clause C1.12 Waste and Recycling Facilities
- Clause C1.15 Storage Facilities
- Clause C1.21 Seniors Housing
- Clause C1.24 Public Road Reserve - Landscaping and Infrastructure
- Clause C4.4 Subdivision - Public Roads, Footpath and Streetscape
- Clause D1.13 Landscaped Area
- Clause D1.15 Fences
- Built Form Control Side building line (multi-unit housing)
- Built Form Control Landscaped areas

5. Pursuant to Section 4.15(1)(b)(i) of the Environmental Planning and Assessment Act 1979, the proposed development will result in unacceptable impacts on the natural environment of the Avalon Beach Locality.

6. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development is not consistent with the Desired Future Character of the location and is an over-development of the site.

7. Pursuant to Section 4.15(1)(e) of the Environmental Planning

On 24 December 2019, the applicant filed a **Class 1 Appeal (Proceedings [2021] NSWLECC 1490)** with the NSW Land and Environment Court against Council's deemed refusal of DA2019/1260.

On 26 August 2021, the Land and Environment Court issued a judgment and upheld the appeal which relied on amended plans.

#### Modification Application

On 8 July 2022, a Class 1 appeal was filed with the Land and Environment Court in relation to a modification application to modify development consent DA2019/1260 granted by the Court on 26 August 2021, in Armada Avalon Pty Ltd v Northern Beaches Council (2021) NSWLEC 1490 (proceedings number 2019/404226).

On 18 July 2022, Council received the subject Modification Application No. MOD2022/0397.

#### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The SEE notes that the application has been made pursuant to section 4.55(8) and Section 4.55(2) of the Environmental and Assessment Act 1979.

S4.55(8) states: **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.*

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2019/1260, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(8) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(2) - Other Modifications	Comments
(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 consent authority and subject to and in accordance with the	

Section 4.55(2) - Other Modifications	Comments
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	<p><b>Yes</b> - The development, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/1260.</p> <p>The modified proposal results in a minor modification of the footprint of each of the four buildings resulting in an additional 90.4sqm of floor area. In addition, the proposal involves minor internal and external changes to the buildings and the removal of a tree which has been confirmed as dead. There is no change to the number of units approved (10 units), car parking or access, the height of the development or its presentation to the street. The proposal will not result in unreasonable amenity impacts to neighbours in terms of of a loss of privacy or overshadowing.</p>
(b) it has notified the application in accordance with:  (i) the regulations, if the regulations so require,  or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(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	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA2019/1260.
(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.	See discussion on "Notification & Submissions Received" in this report.

## Section 4.15 Assessment

In accordance with Section 4.56 of the Environmental Planning and Assessment Act 1979, in



determining an modification application made under Section 4.55 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 relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2001 (EP&A Regulation 2001)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted with the original application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of	<b>(i) Environmental Impact</b>

Section 4.15 'Matters for Consideration'	Comments
the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><b>(iii) Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 27/07/2022 to 10/08/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Mr Craig Douglas Berry	23 North Avalon Road AVALON BEACH NSW 2107
Mr Laurie Bombardiere	22 North Avalon Road AVALON BEACH NSW 2107
Mrs Deborah Elizabeth Denman	8 Urara Road AVALON BEACH NSW 2107
Mr Hannah Richmond	47 Tasman Road AVALON BEACH NSW 2107
Skye Beckett	3 Sanctuary Avenue AVALON BEACH NSW 2107
Mr Barry Norman Hanstrum Mrs Susan Jane Hanstrum	31 North Avalon Road AVALON BEACH NSW 2107

The following issues were raised in the submissions:

- **Bulk, scale and character**
- **Tree loss**
- **Process**

The above issues are addressed as follows:

- **Bulk, scale and character**

The proposal increases the scale of the development beyond the planning controls (density/FSR, open space, parking) and is contrary to the new State policy which recognises the medium density development of the locality.

The submissions raised concerns that the the modification will result in an even greater exposure to the large western wall. The bulk and scale is out of context with the character of the locality area and results in unreasonable visual impacts and represents overdevelopment, the modified development resemble an apartment block.

Comment:

It is acknowledged that the proposal increases the FSR from 0.5:1 to 0.54:1 (an additional 90sqm).

There is no mechanism for the consideration of a Clause 4.6 variation to the FSR Development Standard specified in SEPP Housing 2021, as the application is a Modification Application and not a Development Application. Irrespective of this, the additional floor space does not preclude the application needing to meet the design principles set out in Division 6.

As such, the proposal is consistent with Division 6 - Non-discretionary development standards clause 106 Interrelationship of Division with design principles in Division 6 states:

*Nothing in this Division permits the granting of consent to development under this Part if the consent authority is satisfied that the design of the seniors housing does not demonstrate that adequate consideration has been given to the principles set out in Division 6.*

Despite the 12sqm reduction in the amount of LOS, the proposal still complies with the 30% LOS requirement of SEPP (Housing) 2021.

It is appreciated that the proposal will extend the length of the eastern and western wall between 1.4m - 1.65m. The extension of the north-western block does not however project beyond the rear building line of No. 25 North Avalon Parade and the existing and proposed planting along the side boundaries help soften the bulk and massing of the development as viewed from the neighbouring properties. In addition, it is noted that the side elevations have recessed elements which help articulate the development and reduce perceived visual bulk as observed from the adjoining properties. As such, it is not considered that the extension of the development will result in unreasonable visual impact to the western and eastern neighbours.

The proposal will not change the presentation of the approved development in the streetscape or have any impacts on the character of the locality. Refer to the detailed discussion under the SEPP (Housing) section of this report.

- **Tree loss**

The submissions raised concerns that the proposal includes the removal of a tree that was identified for retention.

Comment:

An arborist report has been submitted with the application which confirms that Tree 24 is dead. Council's Landscape Officer has no objections subject to a condition requiring the replanting of one locally native small tree, refer to discussion under the Referral section of this report.

- **Process**

The submissions raised concerns that the application is not *substantially the same as the original development*. The incremental increase in the scale of the development pushes the boundaries of achievable approval.

Comment:

The proposal results in a minor modification of the footprint of each of the four buildings, resulting in an additional 90.4sqm of floor area. In addition, the proposal involves minor internal and external changes to the buildings and the removal of a tree which has been confirmed as dead. There is no change to the number of units approved (10 units), the approved car parking or access, the height of the development or its presentation to the street. The proposal will not result in unreasonable amenity impacts to neighbours in terms of a loss of privacy or overshadowing. The proposal is therefore assessed as being substantially the same as the original development and the applicant has followed the correct procedure in seeking an amendment to the original approval via a Modification Application in tandem with a Class 1 application to the Land and Environment Court.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported subject to conditions</b></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p> <p><u>Planners comments</u></p> <p>The conditions recommended by Council's Building Assessment Officer relating to the BCA and Fire Safety have already been imposed in the original consent and are still valid.</p>
Landscape Officer	<b>Supported subject to a new condition</b>

Internal Referral Body	Comments
	<p>The application is for modification to development application DA2019/1260 approved by the Land and Environment Court. 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, and additions are proposed to the dwellings at the rear of the site with Dwellings 5 and 9 to be extended above the basement and minor additions are proposed on Level 2 to the rear of Dwellings 4, 5, 9 and 10. A planter and garden bed has been added on the eastern side of Dwelling 9 over the basement.</p> <p>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 approved Landscape area of 702m<sup>2</sup> is proposed to be reduced to 689.4m<sup>2</sup> and is maintained over the 668m<sup>2</sup> requirement under the relevant at the time Housing for Seniors and People with a Disability SEPP. The approved Deep Soil area of 618m<sup>2</sup> is proposed to be reduced to 609.74m<sup>2</sup> and is maintained over the 334m<sup>2</sup> requirement under the 'relevant at the time' Housing for Seniors and People with a Disability SEPP.</p> <p>The amended proposal does not require the removal of any additional trees. A Arboricultural Certification is submitted identifying that tree 24 (Grevillea moonlight) is dead and retention under the approval is not attainable. As a dead tree under the Pittwater DCP exempt provisions, no Council approval is required for such removal. The loss of canopy shall be replaced by a small tree in its place and a condition shall be imposed under this modification should the application be approved.</p> <p>Landscape Referral raise no objections to the amended landscape plans submitted identified as drawings 2604 LP-00 issue 01 and 2604 LP-01 issue 04, relative only to the modified landscape works contained in the amended plans.</p>
NECC (Bushland and Biodiversity)	<p><b>Supported without conditions</b></p> <p>The modification has been reviewed, and the amended proposal does not require the removal of any additional trees. A Arboricultural Certification is submitted identifying that tree 24 (Grevillea moonlight) is dead and retention under the approval is not attainable. As a dead tree under the Pittwater DCP exempt provisions, no Council approval is required for such removal. The loss of canopy shall be replaced by a small tree in its place and a condition shall be imposed as part of the Landscape Referral should the application be approved.</p>
NECC (Development Engineering)	<p><b>Supported without conditions</b></p> <p>No issues are raised with the application.</p>
NECC (Stormwater and Floodplain Engineering –	<p><b>Supported without conditions</b></p>

Internal Referral Body	Comments
Flood risk)	<p>The proposed seniors living development is located within the Probable Maximum Flood extent as identified in the Avalon to Palm Beach Floodplain Risk Management Study and Plan, 2017.</p> <p>The proposed modifications include a minor extension of the building footprints and paving. However the floor levels are still at or above the PMF level.</p> <p>It is not considered that flood risk is increased.</p> <p>No further conditions apply.</p>
NECC (Water Management)	<p><b>Supported without conditions</b></p> <p>The Modification has been assessed in accordance with the relevant legislation and Council policies and no issues identified with the proposal.</p>
Strategic and Place Planning (Urban Design)	<p><b>Supported, without conditions</b></p> <p>The application has been assessed against SEPP (Housing) 2021 and no issues are raised.</p> <p><u>Original comments</u></p> <p>This advice is provided as an internal referral from the Urban Design unit to the development assessment officer for consideration and coordination with the overall assessment.</p> <p>Urban Design may be able to support the modification proposal if the following issues are addressed:</p> <ul style="list-style-type: none"> <li>• The proposed modification includes minor amendments to all internal dwelling layouts (not specifically highlighted with clouding). These amendments include reduction of doorway circulation access to some secondary bedrooms.</li> <li>• Additional access information should be provided to ensure that the requirements of SEPP HSPD Schedule 3 can still be satisfied with all proposed internal amendments. These amendments also include an adjustment to the living rooms of the rear dwellings which are now shown as being relatively narrow at approximately 3m wide. The previous layout was preferable.</li> </ul> <p>The proposed modification includes minor amendments to external elements of the dwellings (not specifically highlighted with clouding). These amendments appear to include the extension of the roof overhang to the primary open spaces to the rear dwellings by an additional 750mm (approximately). This reduces the sunlight to these primary private open spaces, particularly dwellings 4 and 5. The previous roof overhang was preferable.</p>

Internal Referral Body	Comments
	<p><u>Planners comments</u></p> <p>The application has been assessed against SEPP (Housing) and there are no issues with regards to compliance with solar access or accessibility which would justify the imposition of conditions to address the issues raised in the original Urban Design referral.</p> <p><u>Updated Urban Design comments</u></p> <p>The application has been considered against SEPP (Housing) 2021 and it is agreed that all issues there there are no inconsistencies with the controls pertaining to solar access and accessibility, as such no conditions are required.</p>
Waste Officer	<p><b>Supported without conditions</b></p> <p>Minor modifications to basement binroom and street level bin holding bay do not impact on delivery of waste collection service.</p> <p>Existing court imposed conditions to remain, unchanged.</p> <p>Recommendation - Acceptable, without conditions.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

## State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

### SEPP (Housing for Seniors or People with a Disability) 2004

The original application was assessed under SEPP (HSPD) 2004, which has been repealed.

SEPP (Housing) 2021 was adopted on 1 March 2022 and is now the relevant Policy.

Schedule 7A Savings Provisions was modified on 12 August 2022 to add sub-clause (da).

**2 General savings provision**

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

In accordance with sub-clause 2(da), the saving provisions do not apply and the modification application requires assessment under SEPP (Housing) 2021 as opposed to SEPP (HSPD) 2004, refer to discussion below.

**SEPP (Housing) 2021**

**Part 5 – Housing for seniors and people with a disability**

<b>Clause 84 – Development Standards (General)</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
2) Development consent must not be granted for the development unless:	
a) The site area of the development is at least 1,000m <sup>2</sup> .	<b>Complies:</b> The site area is 2,226sqm
b) The frontage of the site area of the development is at least 20m measured at the building line.	<b>Complies:</b> The site has a 36.5m frontage
c) For development on land in a residential zone where residential flat buildings are not permitted - the development will not result in a building: <ul style="list-style-type: none"> <li>i) with a height of more than 9.5m, or</li> </ul>	<b>Complies:</b> There is no change to the approved height of the development which is 7.1m and has a maximum height of 2 storeys adjacent to the boundary.



ii) with more than 2 storeys if the building is adjacent to the boundary of the site area.	
3) The development may result in a building with a height of no more than 11.5m if servicing equipment on the roof of the building:	
a) Is fully integrated into the design of the roof or contained and suitably screened from view from public places.	<b>N/A:</b> With the exception of skylights above the open plan living areas of units 4,5,9 and 10 there is no change to the approved roof design.
b) Is limited to an area of no more than 20% of the surface area of the roof.	<b>N/A:</b> As noted above, the roof design does not include serving equipment.

### Clause 85 – Development Standards for Hostels and Independent Living (Self-Care) Units

#### Standard

- 1) Development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the following under Schedule 4.
- 2) An independent living unit, or part of an independent living unit, located above the ground floor in a multi-storey building need not comply with the requirements in Schedule 4 (being Sections 2, 7 - 13 and 15 – 20) if the development application is made by, or by a person jointly with, a social housing provider.

The application has not been made by a social housing provider, as such clause 85 (2) is not relevant.

An assessment against Schedule 4 has been completed in the following tables:

Part 1 - Standards applying to hostels and independent living units	
Section 2 - Siting Standards	
1) If the whole of the site has a gradient of less than 1:10, 100% of the dwellings must have wheelchair access by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road.	<b>Complies:</b> There is no change to the gradient of the site or the approved accessible path of travel to the adjoining road. The proposal requires compliance with the approved Access Report prepared by Vita Access Architects dated 22 September 2020.
2) If the whole of the site does not have a gradient of less than 1:10: <ul style="list-style-type: none"> <li>a) the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10, or 50% (whichever is greater), and</li> <li>b) the wheelchair access provided must be by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road or an internal road or a driveway accessible to all residents.</li> </ul>	<b>N/A:</b> The site has a gradient of less than 1:10.
3) Access must be provided in accordance with AS 1428.1 so that a person using a wheelchair can use common areas and common facilities associated with the development.	<b>Complies:</b> As above, the modified application requires compliance with the approved access report.
Section 3 - Security	

<p>Pathway lighting:</p> <ul style="list-style-type: none"> <li>a) must be designed and located so as to</li> <li>b) avoid glare for pedestrians and adjacent dwellings, and must provide at least 20 lux at ground level.</li> </ul>	<p><b>Can comply:</b> As above, the modified application requires compliance with the approved access report.</p>
<b>Section 4 - Letterboxes</b>	
<p>Letterboxes:</p> <ul style="list-style-type: none"> <li>a) must be situated on a hard standing area and have appropriate wheelchair access</li> <li>b) by a continuous accessible path of travel,</li> <li>c) (within the meaning of AS 1428.1); and must be lockable, and must be located together in a central location adjacent to the street entry or, in the case of independent living units, must be located together in one or more central locations adjacent to the street entry.</li> </ul>	<p><b>Complies:</b> There is no change to the location of the letterboxes which are in an accessible location at the frontage of the site.</p>
<b>Section 5 - Private Car Accommodation</b>	
<p>If car parking (not being car parking for employees) is provided:</p> <ul style="list-style-type: none"> <li>a) car parking spaces must comply with the requirements for parking for persons with a disability set out in AS 2890.6, and</li> <li>b) 10% of the total number of car parking spaces (or at least one space if there are fewer than 10 spaces) must be designed to enable the width of the spaces to be increased to 3.8 metres, and</li> <li>c) any garage must have a power-operated door, or there must be a power point and an area for motor or control rods to enable a power-operated door to be installed at a later date.</li> </ul>	<p><b>Complies:</b> There is no change to the approved compliant car parking.</p>
<b>Section 6 - Accessible Entry</b>	
<p>Every entry (whether a front entry or not) to a dwelling, not being an entry for employees, must comply with sections 4.3.1 and 4.3.2 of AS 4299.</p>	<p><b>Can Comply:</b> There is no change to the location of entry doors and the modified application requires compliance with the approved access report. The internal layout of the units is very similar to the internal layout of the units approved under the original court consent. A condition requires that suitably qualified access consultant confirms that the amended proposal maintains compliance with the approved access report.</p>
<b>Section 7 - Interior - General</b>	
<p>Internal doorways must have a minimum clear opening that complies with AS 1428.1.</p>	<p><b>Complies:</b> As above, the modified application requires compliance with the approved access report a condition ensures that the amended design maintains compliance with the access</p>

	report.
Internal corridors must have a minimum unobstructed width of 1m.	<b>Complies:</b> Internal corridors have a min width of 1m.
Circulation space at approaches to internal doorways must comply with AS 1428.1.	<b>Complies:</b> The modified application requires compliance with the approved access report.
<b>Section 8 - Bedroom</b>	
<p>At least 1 bedroom within each dwelling must have:</p> <ul style="list-style-type: none"> <li>a) an area sufficient to accommodate a wardrobe and a bed sized as follows: <ul style="list-style-type: none"> <li>i) <b>for a dwelling in a hostel</b> - a single-size bed,</li> <li>ii) <b>for an independent living unit</b> - a queen-size bed, and</li> </ul> </li> <li>b) a clear area for the bed of at least: <ul style="list-style-type: none"> <li>i) 1.2m wide at the foot of the bed, and</li> <li>ii) 1m wide beside the bed between it and the wall, wardrobe or another obstruction, and</li> </ul> </li> <li>c) 2 double general power outlets on the wall where the head of the bed is likely to be, and</li> <li>d) at least 1 general power outlet on the wall opposite the wall where the head of the bed is likely to be, and</li> <li>e) a telephone outlet next to the bed on the side closest to the door and a general power outlet beside the telephone outlet, and</li> <li>f) wiring to allow a potential illumination level of at least 300 lux.</li> </ul>	<b>Complies:</b> All bedrooms have sufficient space to meet the requirements.
<b>Section 9 - Bathroom</b>	
<p>1) At least 1 bathroom within a hostel or independent living unit must be on the ground or main floor and have the following facilities arranged within an area that provides for circulation space for a wheelchair around sanitary facilities in accordance with AS 1428.1:</p> <ul style="list-style-type: none"> <li>a) a slip-resistant floor surface,</li> <li>b) a washbasin with plumbing that would facilitate clearances that comply with AS 1428.1,</li> <li>c) a shower that complies with AS 1428.1, except that the following must be able to be accommodated:</li> </ul>	<b>Complies:</b> The modified application requires compliance with the approved access report.

<ul style="list-style-type: none"> <li>i) a grab rail,</li> <li>ii) a portable shower head,</li> <li>iii) a folding seat,</li> </ul> <p><b>Note:</b> Sub-section (1)(c) does not prevent the installation of a shower screen that can easily be removed to facilitate future accessibility.</p> <ul style="list-style-type: none"> <li>d) a wall cabinet sufficiently illuminated to be able to read the labels of items stored in it,</li> <li>e) a double general power outlet beside the mirror.</li> </ul>	
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<b>Section 10 - Toilet</b>	
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A dwelling must have at least 1 toilet on the ground (or main) floor and be a visitable toilet that complies with the requirements for sanitary facilities of AS 4299.	<b>Complies:</b> The modified application requires compliance with the approved access report.
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<b>Section 11 - Surface Finishes</b>	
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Balconies and external paved areas must have slip-resistant surfaces.	<b>Complies:</b> The modified application requires compliance with the approved access report.
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<b>Section 12 - Door Hardware</b>	
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Door handles and hardware for all doors, (including entry doors and other external doors), must be provided in accordance with AS 4299.	<b>Complies:</b> The modified application requires compliance with the approved access report.
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<b>Section 13 - Ancillary Items</b>	
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Switches and power points must be provided in accordance with AS 4299.	<b>Complies:</b> The modified application requires compliance with the approved access report.
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<b>Part 2 - Additional Standards for Independent Living Units</b>	
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<b>Section 15 - Living Room and Dining Room</b>	
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1) A living room must have: <ul style="list-style-type: none"> <li>a) a circulation space in accordance with clause 4.7.1 of AS 4299, and</li> <li>b) a telephone adjacent to a general power outlet.</li> </ul>	<b>Complies:</b> The modified application requires compliance with the approved access report.
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2) A living room and dining room must have wiring to allow a potential illumination level of at least 300 lux.	<b>Complies:</b> The modified application requires compliance with the approved access report.
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<b>Section 17 - Access to kitchen, Main Bedroom, Bathroom and Toilet</b>	
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In a multi-storey independent living unit, the kitchen, main bedroom, bathroom and toilet must be located on the entry level.	<b>N/A</b>
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<b>Section 18 - Lifts in Multi-Storey Buildings</b>	
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In a multi-storey building containing separate independent living units on different storeys, lift	<b>N/A</b>
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access must be provided to dwellings above ground level of the building by way of a lift complying with clause E3.6 of the Building Code of Australia.	
<b>Section 19 - Laundry</b>	
An independent living unit must have a laundry that has: <ul style="list-style-type: none"> <li>a) a circulation space at door approaches</li> <li>b) that complies with AS 1428.1, and</li> <li>c) provision for the installation of an</li> <li>d) automatic washing machine and a</li> <li>e) clothes dryer, and</li> </ul> a clear space in front of appliances of at least 1,300mm, and a slip-resistant floor surface, and an accessible path of travel to any clothesline provided in relation to the dwelling.	<b>Complies:</b> The modified application requires compliance with the approved access report.
<b>Section 20 - Storage for Linen</b>	
Linen storage must be provided in accordance with clause 4.11.5 of AS 4299.	<b>Complies:</b> The modified application requires compliance with the approved access report.
<b>Section 21 - Garbage</b>	
A garbage storage area must be provided in an accessible location.	<b>Complies:</b> There is no change to the location of the approved garbage area which is in a accessible location.

<b>Clause 86 - Development Standards for Seniors Housing in Zones RE2, SP1, RU5 and R2</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
1) Development consent must not be granted for development for the purposes of seniors housing unless the consent authority is satisfied as follows:	
a) RE2 Private Recreation <ul style="list-style-type: none"> <li>i) The development is carried out on land</li> <li>ii) used for the purposes of an existing registered club.</li> </ul> The land adjoins land in a prescribed zone.	<b>N/A:</b> The site is located in a R2 Low Density Residential Area.
b) SP1 Special Purpose <ul style="list-style-type: none"> <li>i) Development for the purposes of a place of public worship, an educational</li> <li>ii) establishment, a hospital or seniors housing is permitted on the land.</li> </ul> The land adjoins land in a prescribed zone.	<b>N/A:</b> The site is located in a R2 Low Density Residential Area.
c) RU5 Village <ul style="list-style-type: none"> <li>i) The development is carried out on land</li> <li>ii) within 50km of a 24-hour health services facility.</li> </ul> The land is serviced by reticulated water	<b>N/A:</b> The site is located in a R2 Low Density Residential Area.

and sewerage.

<b>Clause 87 – Additional Floor Space Ratios</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
1) This section applies to development for the purposes of seniors housing on land to which this Part applies if:	
a) development for the purposes of a residential flat building or shop top housing is permitted on the land under another environmental planning instrument, or	<b>N/A</b>
b) the development is carried out on land in Zone B3 Commercial Core.	<b>N/A</b>
2) Development consent may be granted for development to which this section applies if:	
a) the site area of the development is at least 1,500m <sup>2</sup> , and	<b>Complies:</b> The site area is 2,226sqm.
b) The development will result in a building with the maximum permissible floor space ratio plus: <ul style="list-style-type: none"> <li>i) for development involving independent living units - an additional 15% of the</li> <li>ii) maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units,</li> <li>iii) the purposes of independent living units, or</li> <li>for development involving a residential care facility - an additional 20% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the residential care facility, or</li> <li>for development involving independent living units and residential care facilities - an additional 25% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units or a residential care facility, or both, and</li> </ul>	<b>N/A:</b> There is no permissible FSR in the PLEP that applies to the site therefore the sub-clause is not relevant.
c) The development will result in a building with a height of not more than 3.8m above the maximum permissible building height.	<b>Complies:</b> There is no change to the approved height that sits below the maximum 8.5m height limit.

<b>Clause 88 – Restrictions on Occupation of Seniors Housing</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
1) Development permitted under this Part may be carried out for the accommodation of only the following:	<b>Complies</b> (see below)
a) seniors or people who have a disability,	<b>Complies</b> (see below)
b) people who live in the same household with seniors or people who have a disability,	<b>Complies</b> (see below)

c) staff employed to assist in the administration and provision of services to housing provided under this Part.	<b>Complies</b> (see below)
2) Development consent must not be granted under this Part unless the consent authority is satisfied that only the kinds of people referred to in sub-section (1) will occupy accommodation to which the development relates.	<b>Complies:</b> Condition 4 of the original court consent requires the development to be occupied by:  <i>a. seniors or people who have a) disability, b). people who live within the same household with seniors or people who have a disability, c). staff employed to assist in the administration of and provision of services to housing provided under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.</i>

<b>Clause 89 – Use of Ground Floor of Seniors Housing in Business Zones</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
2) Development consent must not be granted for development involving the building unless the part of the ground floor of the building that fronts a street will not be used for residential purposes.	<b>N/A</b>
3) Sub-section (2) does not apply to a part of a building that:	<b>N/A</b>
a) faces a service lane that does not require active street frontages, or	<b>N/A</b>
b) is used for 1 or more of the following purposes: i) a lobby for a residential, serviced ii) apartment, hotel or tenanted component iii) of the building, access for fire services, vehicular access.	<b>N/A</b>
4) Sub-section (2) does not apply if another environmental planning instrument permits the use of the ground floor of the building for residential purposes.	<b>N/A</b>

<b>Clause 90 – Subdivision</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
1) Development consent may be granted for the subdivision of land on which development has been carried out under this Part.	<b>N/A</b>
2) Development consent must not be granted for the subdivision of a building resulting from development carried out under this Part on land in Zone R2 Low Density Residential or Zone B3 Commercial Core.	<b>N/A</b>

<b>Clause 91 – Fire sprinkler systems in residential care facilities</b>	

Standard	Compliance/Comment
1) A consent authority must not grant consent for development for the purposes of a residential care facility unless the facility will include a fire sprinkler system.	N/A
2) Development for the purposes of the installation of a fire sprinkler system in a residential care facility may be carried out with development consent.	N/A

Clause 92 – Development on land used for the purposes of an existing registered club	
Standard	Compliance/Comment
1) Development consent must not be granted for development under this Part on land used for the purposes of an existing registered club unless the consent authority is satisfied that:	
a) the development includes appropriate measures to separate the club from the residential areas of the development to avoid land use conflicts, and	N/A
b) an appropriate protocol will manage the relationship between the seniors housing and the gambling facilities on the site of the club to minimise harm associated with the misuse and abuse of gambling activities by residents of the seniors housing.	N/A
2) For the purposes of subsection (1)(a), appropriate measures include the following:	
a) separate pedestrian access points for the club and the residential areas of the seniors housing,	N/A
b) design principles underlying the building aimed at ensuring acceptable noise levels in bedrooms and living areas in the residential areas of the seniors housing.	N/A

#### Division 4 – Site-related requirements

Clause 93 – Location and access to facilities and services (independent living units)	
Standard	Compliance/Comment
1) Development consent <b>must not</b> be granted for development for the purposes of an independent living unit unless the consent authority has considered whether residents will have adequate access to <b>facilities and services</b> :	
a) by a transport service that complies with subsection (2), or	<b>Assessed as acceptable:</b> The original consent included a requirement for a new footpath between the site and the public transport service along Barrenjoey Road and the related upgrades to existing footpaths. There is no change to this component of the development.
b) on-site.	<b>Assessed as acceptable:</b> See above.
<b>Note:</b> Facilities and services means:	
a) shops and other retail and commercial services that residents may reasonably require, and	



<ul style="list-style-type: none"> <li>b) community services and recreation facilities, and</li> <li>c) the practice of a general medical practitioner.</li> </ul>	
2) The transport service must:	
a) take the residents to a place that has adequate access to facilities and services, and	<b>Assessed as acceptable:</b> See above.
b) for development on land within the Greater Sydney region: <ul style="list-style-type: none"> <li>i) not be an on-demand booking service for</li> <li>ii) the transport of passengers for a fare, and</li> </ul> be available both to and from the site at least once between 8am and 12pm each day and at least once between 12pm and 6pm each day.	<b>N/A</b>
3) For the purposes of sub-sections (1) and (2), access is adequate if:	
a) the facilities and services are, or the transport service is, located at a distance of not more than 400m from the site, and	<b>Assessed as acceptable:</b> The site is measured at 414.6m from the nearest bus stop that provides access to facilities and services required under the SEPP. The original court approval supported the applicant's Clause 4.6 written submission for a variation of the development standard in respect of cl 26(2)9B)(i) of SEPP HSPD. The subject modification does not seek to change the design of the approved new and upgraded footpaths to connect the site.
b) the distance is accessible by means of a suitable access pathway, and	<b>Assessed as acceptable:</b> There is no change to the approved design of the new and upgrade footpaths that will meet the accessibility requirements.
c) the gradient along the pathway complies with sub-section (4)(c).	<b>Assessed as acceptable:</b> As above, there is no change to the approved design of the new and upgrade footpaths that will meet the accessibility requirements.
4) In sub-section (3):	
a) a suitable access pathway is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like, and	<b>Assessed as acceptable:</b> As above, there is no change to the approved design of the new and upgrade footpaths that will meet the accessibility requirements.
b) the distance is to be measured by reference to the length of the pathway, and	<b>Assessed as acceptable:</b> As above, there is no change to the approved design of the new and upgrade footpaths that will meet the accessibility requirements.
c) the overall average gradient must be no more than 1:14 and the gradients along the pathway must be no more than: <ul style="list-style-type: none"> <li>i) 1:12 for a maximum of 15m at a time, or</li> <li>ii) 1:10 for a maximum length of 5m at a</li> <li>iii) time, or</li> </ul>	<b>Complies:</b> As above, there is no change to the approved design of the new and upgrade footpaths that will meet the accessibility requirements.

1:8 for a maximum length of 1.5m at a time.

**Clause 94 – Location and access to facilities and services (residential care facilities)**

<b>Standard</b>	<b>Compliance/Comment</b>
1) Development consent must not be granted for development for the purposes of a residential care facility unless the consent authority is satisfied that residents of the facility will have access to facilities and services:	<b>N/A:</b> The proposal is for self contained independent living units and not a residential care facility.
a) on-site, or	<b>N/A</b>
b) by a transport service other than a passenger service.	<b>N/A</b>

**Clause 95 – Water and sewer**

<b>Standard</b>	<b>Compliance/Comment</b>
1) A consent authority must not consent to development under this Part unless the consent authority is satisfied the seniors housing will:	
a) be connected to a reticulated water system, and	<b>Complies</b>
b) have adequate facilities for the removal or disposal of sewage.	<b>Complies</b>
2) If the water and sewerage services will be provided by a person other than the consent authority, the consent authority:	
a) must consider the suitability of the site in relation to the availability of reticulated water and sewerage infrastructure, or	<b>Complies</b>
b) if reticulated services are not available—must satisfy the relevant authority that the provision of water and sewerage infrastructure, including environmental and operational considerations, is satisfactory for the development.	<b>Complies</b>

**Clause 96 – Bush fire prone land**

<b>Standard</b>	<b>Compliance/Comment</b>
1) A consent authority must not consent to development under this Part on bush fire prone land unless the consent authority is satisfied that the development complies with the requirements of Planning for Bushfire Protection.	<b>N/A:</b> The site is not mapped as Bush Fire prone land.
2) In determining a development application for development under this Part on land near bush fire prone land, a consent authority must:	
a) consult with the NSW Rural Fire Service and consider its comments, and	<b>N/A</b>
b) consider the following including: <ul style="list-style-type: none"> <li>i) the location of the development,</li> <li>ii) the means of access to and egress from</li> </ul>	<b>N/A</b>

<ul style="list-style-type: none"> <li>iii) the location,</li> <li>iv) the size of the existing population within</li> <li>v) the area,</li> <li>vi) age groups within the population and the</li> <li>vii) number of persons within the age</li> <li>viii) groups,</li> <li>ix) the number of hospitals and other</li> <li>x) facilities providing care to the residents of</li> <li>xi) the facilities within the area, and the</li> <li>number of beds within the hospitals and</li> <li>facilities,</li> <li>the number of schools within the area</li> <li>and the number of students at the</li> <li>schools,</li> <li>existing seniors housing within the area,</li> <li>the road network within the area and the</li> <li>capacity of the road network to cater for</li> <li>traffic to and from existing development if</li> <li>there were a need to evacuate persons</li> <li>from the area in the event of a bush fire,</li> <li>the adequacy of access to and from the</li> <li>site of the development for emergency</li> <li>response vehicles,</li> <li>the nature, extent and adequacy of bush</li> <li>fire emergency procedures that can be</li> <li>applied to the development and its site,</li> <li>the requirements of Fire and Rescue</li> <li>NSW.</li> </ul>	
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## Division 5 – Design requirements

<b>Clause 97 – Design of in-fill self-care housing</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
In determining a development application for development for the purposes of in-fill self-care housing, a consent authority must consider the <b><i>Seniors Living Policy: Urban Design Guideline for Infill Development</i></b> published by the Department of Infrastructure, Planning and Natural Resources in March 2004.	<b>Complies:</b> The application has been assessed in accordance with the Guideline as discussed below.

<b>Clause 98 – Design of seniors housing</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
A consent authority must not consent to development under this Part unless the consent authority is satisfied that the development demonstrates adequate regard has been given to the principles set out in Division 6 (see table below).	<b>Complies:</b> See below.

## Division 6 – Design Principles

<b>Clause 99 – Neighbourhood amenity and streetscape</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
Development for the purposes of seniors housing should:	
a) recognise that the operational, functional and economic requirements of residential care facilities typically require a different building shape from other residential accommodation, and	<b>Complies:</b> The proposal is for infill self care housing and not a residential care facility.
b) recognise the desirable elements of: <ul style="list-style-type: none"> <li>i) the location's current character, or</li> <li>ii) for precincts undergoing a transition - the future character of the location so new buildings contribute to the quality and identity of the area,</li> </ul>	<b>Complies:</b> The Court was satisfied that the original development addressed the design principles of CI 33 of SEPP HDPD . The design principles in SEPP (Housing) 2021 are generally the same as the Design Principles in SEPP (HSPD) 2004. There is no change to the presentation of the approved development in the streetscape in respect of height, bulk, scale, or landscaped setback and no adverse impact on the quality and identity of the locality.
c) complement heritage conservation areas and heritage items in the area, and	<b>N/A:</b> The site is not located within a conservation area or within the vicinity of a heritage item.
d) maintain reasonable neighbourhood amenity and appropriate residential character by: <ul style="list-style-type: none"> <li>i) providing building setbacks to reduce</li> <li>ii) bulk and overshadowing, and</li> <li>iii) using building form and siting that relates</li> <li>iv) to the site's land form, and adopting building heights at the street frontage that are compatible in scale with adjacent buildings, and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and</li> </ul>	<p><b>Assessed as acceptable:</b> While the proposal includes an extension to the rear and side of the buildings the proposal does not extend any closer to the front, side or rear setback compared to the approved scheme.</p> <p>Shadow diagrams have been submitted which demonstrate that there is a marginal increase in shadow to No. 25 North Avalon Road at 9am and 10am. However, the proposal maintains compliance with the solar access provisions. As discussed above, there is no change to the approved height and no change to the scale of the development in the street frontage.</p> <p>As a result of the extension to the rear of two northern blocks, the proposal increases the length of the side walls as viewed from the neighbouring properties. Despite this it is considered that there will be no unreasonable impact on neighbouring amenity in terms of solar access and privacy. Any perceived additional visual bulk as observed from the neighbouring properties will be softened with existing and proposed landscape planting, including a requirement for a new tree to be planted to replace tree No. 24.</p>
e) be designed so the front building on the site is set back generally in line with the existing building line, and	<b>Complies:</b> There is no change to the front setback.
f) include plants reasonably similar to other plants	<b>Assessed as acceptable:</b> With the exception of

in the street, and	the removal of one tree (T24), which has been confirmed as a dead species, there is no other changes to the approved landscaping and Council's Landscape Officer has no objections to the proposal subject to the replanting with a native small tree.
g) retain, wherever reasonable, significant trees, and	<b>Assessed as acceptable:</b> As above.
h) be designed so no building is constructed in a riparian zone.	<b>Complies:</b> The proposal will not impact on a riparian zone.

<b>Clause 100 – Visual and acoustic privacy</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
Development for the purposes of seniors housing should consider the visual and acoustic privacy of adjacent neighbours and residents by:	
a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and	<b>Complies:</b> The proposal will not result in an unreasonable visual or acoustic privacy issues as a result of the reviewed location of some windows.
b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	<b>Complies:</b> There is no change to the approved location of the driveway, basement car park or paths. The proposal will not result in an unreasonable acoustic privacy issues as a result of the location of these facilities.

<b>Clause 101 – Solar access and design for climate</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
Development for the purposes of seniors housing should:the	
a) for development involving the erection of a new building provide residents of the building with adequate daylight in a way that does not adversely impact the amount of daylight in neighbouring buildings, and	<b>Complies:</b> Shadow diagrams have been submitted which confirm that the extension of the dwellings will not result in an unreasonable solar access issues to neighbours or the proposed units.
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.	<b>Complies:</b> There is no change to the siting of the approved development.

<b>Clause 102 – Stormwater</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
Development for the purposes of seniors housing should aim to:	
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	<b>Complies:</b> The proposal increases the footprint of the development, despite this Council's Development Engineer has no objections to the proposal in terms of impacts on stormwater.

minimising paved areas, and	
b) include, where practical, on-site stormwater detention or re-use for second quality water uses.	<b>Complies:</b> There are no changes to the approved stormwater plans.

<b>Clause 103 – Crime prevention</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
Development for the purposes of seniors housing should be designed in accordance with environmental design principles relating to crime prevention, provide personal property security for residents and visitors and encourage crime prevention by:	
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 the area, driveway or street, and	<b>Complies:</b> The proposal continues to provide for passive surveillance.
b) providing shared entries, if required, that serve a small number of dwellings and that are able to be locked, and	<b>N/A:</b> There are no shared entries to the units.
c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	<b>Complies:</b> As noted above, the proposal continues to provide for passive surveillance.

<b>Clause 104 – Accessibility</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
Development for the purposes of seniors housing should:	
a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and	<b>Complies:</b> As discussed above, there is no change to the approved plans which require a new and upgraded footpath to link the site to the nearby bus stops.
b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.	<b>Complies:</b> There is no change to approved access or parking.

<b>Clause 105 – Waste management</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
Development for the purposes of seniors housing should include waste facilities that maximise recycling by the provision of appropriate facilities.	<b>Complies:</b> The proposal includes some minor change to the design of the waste area within the basement. Council's Waste Management Officer offers no objections to the proposal.

## **Division 7 – Non-Discretionary Development Standards**

<b>Clause 106 – Interrelationship of Division with design principles in Division 6</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
Nothing in this Division permits the granting of consent to development under this Part if the consent authority is satisfied that the development	<b>Complies:</b> As discussed above, the proposal demonstrates adequate regard to the Design Principles set out in Division 6.

does not demonstrate that adequate regard has been given to the principles set out in Division 6.

**Clause 107 – Non-discretionary development standards for hostels and residential care facilities**

Standard	Compliance/Comment
3) The following are non-discretionary development standards in relation to development for the purposes of a hostel or a residential care facility:	
<b>Height</b>	
a) no building exceeds a height of 9.5m, excluding servicing equipment on the roof of a building,	N/A
b) servicing equipment on the roof of a building, which results in the building exceeding a height of 9.5m: <ul style="list-style-type: none"> <li>i) is fully integrated into the design of the roof or contained and suitably screened</li> <li>ii) from view from public places, and</li> <li>iii) is limited to an area of no more than 20% of the surface area of the roof, and does not result in the building exceeding a height of 11.5m.</li> </ul>	N/A
<b>Density and Scale (FSR)</b>	
c) the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less.	N/A
<b>Communal Open Space</b>	
d) internal and external communal open spaces with a total area of at least: <ul style="list-style-type: none"> <li>i) for a hostel - 8m<sup>2</sup> for every bed, or</li> <li>ii) for a residential care facility - 10m<sup>2</sup> for every bed.</li> </ul>	N/A
<b>Landscaped Area</b>	
e) at least 15m <sup>2</sup> of landscaped area for every bed,	N/A
f) a deep soil zone on at least 15% of the site area, where each deep soil zone has minimum dimensions of 6m and, if practicable, at least 65% of the deep soil zone is located at the rear of the site.	N/A
g) for a hostel - at least 1 parking space for every 10 beds in the hostel,	N/A
h) for a residential care facility - at least 1 parking space for every 15 beds in the facility,	N/A
i) at least 1 parking space for every 2 employees who are on duty at the same time,	N/A
j) at least 1 parking space for the purpose of ambulance parking.	N/A

<b>Clause 108 – Non-discretionary development standards for independent living units</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
2) The following are non-discretionary development standards in relation to development for the purposes of an <b>independent living unit</b> :	
<b>Height</b>	
a) no building exceeds a height of 9.5m, excluding servicing equipment on the roof of a building,	<b>Complies:</b> There is no change to the approved maximum building height which is less than 8m.
b) servicing equipment on the roof of a building, which results in the building exceeding a height of 9.5m: <ul style="list-style-type: none"> <li>i) is fully integrated into the design of the roof or contained and suitably screened</li> <li>ii) from view from public places, and</li> <li>iii) is limited to an area of no more than 20% of the surface area of the roof, and does not result in the building exceeding a height of 11.5m.</li> </ul>	<b>N/A:</b> With the exception of the inclusion of two (2) skylights in the roof and the colour of the roof material there are no other change to the roof design and as servicing equipment is not proposed this clause is not relevant.
<b>Density and Scale (FSR)</b>	
c) the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less.	<p><b>Does not comply:</b> The approved development has an FSR is 0.5:1 (1,113sqm) and the proposed development an FSR is 0.54:1 (1,203.4sqm) an additional 90sqm of GFA.</p> <p>There is no mechanism for the consideration of a Clause 4.6 variation to the FSR Development Standard as the application is a Modification application. Irrespective of this, the additional floor space does not preclude the application meeting the design principles set out in Division 6.</p> <p>As such, the proposal is consistent with <i>Division 7 -Non-discretionary development standards clause 106 Interrelationship of Division with design principles in Division 6</i> which states:</p> <p><i>Nothing in this Division permits the granting of consent to development under this Part if the consent authority is satisfied that the design of the seniors housing does not demonstrate that adequate consideration has been given to the principles set out in Division 6.</i></p>
<b>Landscaped Area</b>	
d) for a development application made by a social housing provider - at least 35m <sup>2</sup> of landscaped area per dwelling,	<b>N/A</b>
e) if (d) does not apply - at least 30% of the site area is landscaped,	<b>Complies:</b> The approved development retained 31.49% or 701sqm LOS. The proposed development retains 30.9% or 689sqm.
f) a deep soil zone on at least 15% of the site	<b>Complies:</b> The proposal results in a 8.3sqm



<p>area, where each deep soil zone has minimum dimensions of 3m and, if practicable, at least 65% of the deep soil zone is located at the rear of the site.</p>	<p>reduction in the approved deep soil area from 618sqm or 27.7% to 609.7sqm or 27.3%. The proposal continues to exceed the minimum deep soil zone requirements.</p> <p>It is not practicable or reasonable for 65% of the deep soil zone to be located at the rear of the site.</p>
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**Solar Access**

<p>g) at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter in living rooms and private open spaces.</p>	<p><b>Complies:</b> The solar diagrams suggest that a very small area of additional shadow will be cast to the garden area of No. 25 at 9am and 10m and a small additional area of shadow to No. 31 at 3pm. There is no additional shadow impact to the subject site which was assessed by the Court as acceptable.</p>
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**Private Open Space**

<p>h) for a dwelling in a single storey building or a dwelling located, wholly or in part, on the ground floor of a multi-storey building:</p> <ul style="list-style-type: none"> <li>i) at least 15m<sup>2</sup> of private open space per</li> <li>ii) dwelling, and</li> </ul> <p>at least 1 private open space with minimum dimensions of 3m accessible from a living area located on the ground floor.</p> <p><b>Note:</b> The open space needs to be accessible only by a continuous accessible path of travel, within the meaning of AS 1428.1, if the dwelling itself is an accessible one (see Schedule</p>	<p><b>Complies</b></p>
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4, section 2).	
i) for a dwelling in a multi-storey building not located on the ground floor – a balcony accessible from a living area with minimum dimensions of 2m and: i) an area of at least 10m <sup>2</sup> , or ii) for a 1 bedroom dwelling - an area of at least 6m <sup>2</sup> .	<b>N/A</b>
<b>Car Parking</b>	
j) for a development application made by, or made by a person jointly with, a social housing provider - at least 1 parking space for every 5 dwellings,	<b>N/A</b>
k) if (j) does not apply - at least 0.5 parking space for each bedroom.	<b>Complies:</b> There is no change to the approved car parking

#### **Pittwater Local Environmental Plan 2014**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

#### Principal Development Standards

#### Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>
1.9A Suspension of covenants, agreements and instruments	Yes
5.21 Flood planning	Yes

#### Detailed Assessment

#### **Pittwater 21 Development Control Plan**

#### Built Form Controls

<b>Built Form Control</b>	<b>Requirement</b>	<b>DA Approved</b>	<b>Mod Proposed</b>	<b>Complies</b>
Front building line	6.5m	<u>Ground</u> 9.4m to the external wall 5.5m to the terrace	unaltered	Yes
Rear building line	6.5m	<u>Ground</u> 9.0m to the external wall 6.0m to the terrace	Ground - unaltered First - 15.1m	Yes

		First 16m		
Side building line	East 3.0m	<u>Ground and First Floor</u> 2.5 - 3.0m	unaltered	In part (no change)
	West 3.0m	<u>Ground and First Floor</u> 2.4 - 3.0m	unaltered	In part (no change)
Building envelope	East 3.5m	Within envelope	unaltered	Yes
	West 3.5m	Outside envelope	unaltered	Yes
*Landscaped area (LOS)	60%	702sqm or 31.5%	689.4sqm or 30.97%	<b>No</b>

**\*Note:** With the exception of a minor increase reduction to the landscape area there is no other changes to the built form controls. Despite the 12.6sqm reduction in LOS the proposal continues to comply with the minimum 30% area in the SEPP which overrides the DCP.

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5.15 Stormwater	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.21 Seniors Housing	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	No	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes

#### Detailed Assessment

##### **D1.5 Building colours and materials**

Clause D1.5 requires external colours and materials to be dark and earthy tones.

The proposal seeks to delete condition 10 which requires:

*The Approved Materials and Finishes Schedule is to be amended, as follows:*

*a. The proposed use of "White" for the external weatherboards (WB) is to be replaced with Dulux "Grey Daze" or darker.*

*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.*

*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".*

*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. The Amended Materials and Finishes Schedule is to be submitted to the Certifying Authority prior to the issue of the construction certificate.*

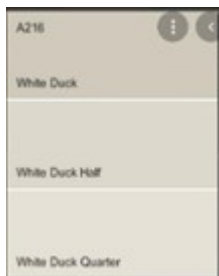
*Reason: To minimise the visual impact of the development.*

Comment:

The proposed revised materials and finishes schedule includes the following external colours:

Roof - shale grey.

External walls - White duck, see image below.



The proposed alternative colours are warm and earthy tones and are consistent with the colours of new developments in the low-lying areas of Avalon. The proposal is consistent with the outcomes of the control and the deletion of the condition is therefore supported

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2022**

Section 7.12 contributions were levied on the Development Application.

## CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

## PLANNING CONCLUSION

This proposal, for a modification application seeks consent for to modify Development Consent No. DA2019/1260 granted by the Land and Environment Court for a Seniors Housing Development comprising 10 self contained dwellings and site consolidation. The modification application seeks consent for a 90.4sqm increase in the approved Gross Floor Area (GFA) resulting in an FSR of 0.54:1 or 1203.4sqm. The modification application also includes internal changes to the dwellings, external changes to the proportions of windows, addition of awnings, changes to the external colours and the removal of a tree (no. 24).

The application is referred to the Development Determination Panel (DDP) due to 6 (six) submissions having been received. The submissions raise issues in respect of additional bulk and scale, which is contrary to density controls of SEPP (Housing) and which is noted to result in adverse visual impacts on the character of the area and as viewed from neighbouring properties. The additional floor space relates to the extension of the dwellings to the rear and side.

There is no change to the presentation of the approved development in the streetscape or unreasonable visual impacts on the character of the locality. The extension of the side walls will not result in unreasonable visual impacts to neighbours as the bulk and scale is softened with existing and proposed planting and through the design which includes articulation via setbacks in the wall plane. In addition, there is no unreasonable impact on neighbouring amenity in terms of solar access or privacy.

While there is an increase in the FRS above the FSR 0.5:1 prescribed in SEPP (Housing) 2021 the proposal maintains consistency with the Design Principles and is therefore consistent with clause 106

of SEPP Housing which relates to the interrelationship of the non-discretionary standards and the design principles set out in Division 6.

Concern has also been raised in respect the removal of Tree 24. The application is supported with an arborist report which confirms that the tree is dead and Council's Landscape Officer has no objections to the proposal subject to replacement planting of Tree 24.

Overall, the development maintains a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

**RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0397 for Modification of Development Consent DA2019/1260 granted for Demolition works and construction of a Seniors Housing development comprising 10 self contained dwellings and site consolidation on land at Lot 33 DP 8394,29 North Avalon Road, AVALON BEACH, Lot 32 DP 8394,27 North Avalon Road, AVALON BEACH, subject to the conditions printed below:

**A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Drwg 030 Rev J Site Plan	16.06.2022	Environa Studio
Drwg 101 Rev J Basement Plan	16.06.2022	Environa Studio
Drwg 102 Rev N Level 1 Plan	21.06.2022	Environa Studio
Drwg 103 Rev M Level 2 Plan	21.06.2022	Environa Studio
Drwg 110 Rev L Roof Plan	16.06.2022	Environa Studio
Drwg 120 Rev I Sections	24.04.2022	Environa Studio
Drwg 130 Rev K Elevations	19.05.2022	Environa Studio
Drwg 131 Rev L Elevations	16.06.2022	Environa Studio
Drwg 132 Rev M Elevations	21.06.2022	Environa Studio
Drwg 210 Rev L Materials and Finishes Schedule	19.05.2022	Environa Studio

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Nathers and BASIX Assessment Report Issue G	01.07.2022	Sustainable Building Consultants

File Ref 22-3328		
Stormwater and Flood Impact Assessment Ref CC200310:BAK\kcd	20.01.2022	ACOR Consultants
Arborist Report Tree 24 Grevillea Moonlight file 7322	09.06.2022	Rain Tree Consulting

c) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

d) The development is to be undertaken generally in accordance with the following:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Drwg 2604LP-00 Existing Tree Plan Rev 04	10.06.2022	John Lock & Associates
Drwg 2604 LP-01 Landscape Plan Rev 04	10.06.2022	John Lock & Associates

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

**B. Delete condition 10 (Amended Schedule of Colours and Finishes).**

**C. Amend condition 10B (Private Open Space of Dwelling 5) to read:**

The dividing fence between Dwellings 5 and 9 is to be 1.8m in height.

Reason: To provide visual privacy between the two adjacent areas of private open space.

**D. Amend Condition 34 (Tree removal within this property) to read as follows:**

This consent approves the removal of the following tree(s) within the property (as recommended in the Approved Arboricultural Impact Assessment and identified by the following ID number):

- a. 15 She Oak,
- b. 17 Spotted Gum,
- c. 18 Paperbark,
- d. 25 Swamp Mahogany,
- e. 26 Macadamia,
- f. 27 Paperbark,
- g. 29 She Oak,
- h. 30 Lillypilly,
- i. 40 Southern Mahogany,
- j. 52 Cheese Tree,
- k. 53 Swamp Mahogany,
- l. 54 Spotted Gum,
- m. 55 Swamp Mahogany,
- n. 56 Brushbox, and
- o. 58 Swamp Mahogany.
- p. 24 Grevillea Moonlight

The following existing exempt trees by species type or under 5 metres in height require removal (as recommended in the Approved Arboricultural Impact Assessment and identified by the following ID number):

- a. 19 Paperbark,

- b. 28 Silky Oak,
- c. 32 Bottlebrush,
- d. 36 Bangalow Palm x 4,
- e. 39 Bottlebrush,
- f. 41 Banana Trees,
- g. 42 Hibiscus,
- h. 47 Mulberry, and
- i. 51 Mulberry.

Exempt species not to be removed include:

- a. 22 Gordonia,
- b. 24 Grevillea, and
- c. 38 Fiddle Leaf Fig.

Reason: To enable authorised building works.

Note: Any request to remove a tree approved for retention under the development application is subject to a Section 4.55 modification application, or an assessment by an Arborist with minimum AQF Level 5 in arboriculture that determines that the tree presents an imminent risk to life or property.

#### (A) Replacement Tree Planting

One (1) locally native small tree shall be planted in the vicinity of the dead tree to be removed identified on plans and reports as tree 24, to achieve at least 6 metres height at maturity, and shall be selected from Northern Beaches Council's Native Plant Species Guide - Pittwater Ward, or Council's Tree Guide, and in accordance with the following:

- i) tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
  - ii) planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established.
- Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity.

#### **Amend Condition 49 (Accessibility) to read as follows:**

(A) A suitably qualified and accredited Access Consultant is to provide shall written certification that the design approved under MOD2022/0397 maintains compliance with the Access Report prepared by Vista Access Architects dated 22 September 2020.

A further certification shall be submitted to confirm that the as built development has been constructed and fit out to ensure compliance with the recommendations of the Approved Access Report referenced in conditions 1 of this consent an the standards prescribed by Schedule 4 (Standards applying to hostels and independent living units) of SEPP (Housing) 2021 that relates to self-contained dwellings.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the occupation certificate.

Reason: To ensure that the proposal maintains accessibility in accordance with legislative requirements.