BBF TOWN PLANNERS

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14 June 2018

The General Manager
Northern Beaches Council
725 Pittwater Road,
Dee Why 2099

Dear Sir,

REQUEST FOR SECTION 4.56 MODIFICATION (PREVIOUSLY SECTION 96 AA) OF LAND AND ENVIRONMENT COURT DA APPROVAL 367/2010

46 VICTORIA PARADE, MANLY

STATEMENT OF MODIFICATION - STATEMENT OF ENVIRONMENTAL EFFECTS

1. INTRODUCTION

On the 23rd January 2012, the Land and Environment Court (the Court) upheld an appeal of a Section 82A Review of Determination and granted consent to the demolition of the existing building and the construction of a five (5) storey Residential Flat Building with Basement Car Parking. Further to this Land and Environment Court Consent, two Section 96 AA Modification Applications, were subsequently approved, one by the Land and Environment Court in October 2012 and one approved by the former Manly Independent Assessment Panel in August 2014, detailed as follows:

- **Section 96 AA** Modification to approved residential flat building involving modifications to the building footprint, internal apartment layouts and parking arrangements. Approved by LEC 9th October 2012
- **Section 96 AA** Modification to approved residential flat building involving modifications to the roof design/profile and modification to the floor levels of the building (Levels 1 to 4) Approved by MIAP 21st August 2014.

We have been instructed by the owners corporation of the subject property to prepare an application pursuant to Section 4.56 (previously 96(AA)) of the Environmental Planning and Assessment Act 1979 ("The Act") proposing minor design amendments to the approved drawings pursuant to Condition DA1 of the Approval. We also request the following conditions be deleted:

Deletion of Condition 1. The condition stipulates the following:

*"The rear wall (southern elevation) of the proposed building is to be setback a minimum of 11 metres from the rear (northern) boundary of the property known as 27 Ashburner Street Manly SP76027. The rear balconies are to be setback a minimum 9.5 metres from the rear (northern) boundary the property known as **47** (27) Ashburner Street, Manly being SP76027. Plans are to be suitably amended prior to the issue of the Construction Certificate."*

***bold** indicates error in condition – this condition should reference 27 Ashburner Street*

We request that Condition 1 as detailed above be deleted in its entirety. All balconies as proposed located to the to the rear southern elevation comply with the 9.5 metre setback requirement to the boundary with 27 Ashburner Street pursuant to this condition, however at the first and second floor levels it is proposed to enclose part of the balconies, which results in a minor encroachment into the rear building line 11 metre setback requirement to the boundary with 27 Ashburner Street, resulting in a setback of 10 metres to the southern boundary at these two levels only. Given the substantial separation distances to this property (in excess of Council's current DCP and SEPP 65 Apartment Design Guide Standards), and integrated privacy screen measures to the two proposed rear facing southern windows at the first and second floor levels it considered that an 11 metre rear building line setback requirement is not warranted and on this basis we request that this condition is deleted.

Furthermore, we also request that Condition 119 be deleted as per the approval. Condition 119 stipulates the following:

"The solid balustrade on the western elevation of level 4 at RL 17.265 which is related to lobby area of Units 12 and 13 is to be replaced with a clear glass balustrade so as to remove the proposed planter."

The level 4 approved planter box and associated deck area is now proposed to form part of a common lobby area, which results in a far more functional and efficient use of this space, rather than a redundant planter box and common balcony area.

This submission is to be read in conjunction with the following modified documentation:

- Architectural Drawings prepared by ARC Architects;
- View Analysis prepared by ARC Architects;
- SEPP 65 Design Verification Statement prepared by ARC Architects;
- Traffic Impact Assessment prepared by Inroads Group;
- Fire Safety Certification prepared by PBC;
- Amended BASIX Certificate prepared by Thermal Certificates
- Stormwater Management Plans prepared by FJA Consulting

Whilst minor design modifications are proposed in relation to the previously approved development, Council can be satisfied that the modifications involve minimal environmental

impact and the development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of Section 4.56 of the Environmental Planning and Assessment Act 1979 which enables Council as the consent authority to modify a Court issued consent.

Works have commenced on the site pursuant to the DA Approval, including the demolition of the building and associated piling works, pursuant to CC 367/2010. The DA Approval has therefore been activated and commenced.

2. DETAIL OF MODIFICATIONS AS SOUGHT

The design modifications sought is to Condition DA1 of the notice of determination (367/2010) as modified to refer to the modified drawings accompanying this application replacing the drawings within the schedule forming condition DA1.

The revised details are contained within:

- Architectural Drawings, including floorplans, elevations, sections, montages and shadow diagrams prepared by ARC Architects.
- Shadow Diagrams prepared by ARC Architects;
- View Analysis prepared by ARC Architects;
- Amended Basix Certificate prepared by Thermal Certificates
- Fire Safety Certificate prepared by PBC
- Stormwater Management Plans prepared by FJM Consulting
- Traffic & Parking Assessment report by Inroads Group; including detail on the proposed WOHR Combilift Car Stacker;
- SEPP 65 Design Verification Statement prepared by ARC Architects
- SEPP 65 Apartment Design Guide Assessment prepared by BBF Town Planners

The changes sought are highlighted on both the comparison and the individual drawings prepared by ARC Architects. The comparison drawings show the design modifications in comparison to last S96 Application prepared by Design Cubicle.

- Apartment Floorplan Modifications to each floor level, comprising a reduction in the total numbers of units from 13 units to 11 units comprising the following mix:

  - 1 x 4 bed
  - 2 x 3 bed
  - 3 x 2 bed
  - 5 x 1 bed

- Modification to basement car parking layout including provision of 17 car parking spaces utilising the approved car stacker arrangement, plus two accessible car parking spaces, totalling 19 car parking spaces provided within the basement level. The application includes the retention 3 visitor spaces located via Dungowan Lane, as approved.

- Modified floor to ceiling heights to each level to comply with the SEPP 65 Apartment Design Guide floor to ceiling height standards;

- Modifications to window locations and arrangements;

- Modification to roof form – the roof form has been modified from a hipped roof to a flat roof set to the approved maximum roof ridge height of 21.20. The proposed lift overrun as detailed, results in minor increase to building height RL22.20, an increase of 1 metre.

- Modifications to the balcony sizes and building footprint, including the enclosure of part of the balconies to the southern elevation at levels 1 and 2;

- Deletion of the planter box and redundant deck area to the western elevation at level 4. This space is proposed to form part of the communal lobby area.

- Relocation of the waste storage area to the basement level.

The approved Gross Floor Area and resultant Floor Space Ratio remains as per the approval (1.78:1), as detailed in the accompanying schedule prepared by ARC Architects.

The design changes as sought to each level are detailed as follows:

- **Basement Level** – revised basement parking and services layout, including the provision of three additional car parking spaces provided within the car stacker arrangement. Revised fire stair configuration, dedicated storage areas to each apartment in compliance with SEPP 65 and the Apartment Design Guide. The revised car parking provision accords with Council's off street parking requirements providing 19 resident car parking spaces, comprising 17 car parking spaces in the approved car parking stacker arrangement, two accessible spaces and 3 visitor car parking spaces. The waste storage area is also proposed to be relocated to the basement. The approved drawings show the waste storage area adjacent to the visitor car parking spaces on Dungowan Lane, however due to the adjustment to the fire stairs and entrance lobby, the waste storage area needs to be relocated to the basement. The body corporate will ensure that the bins are taken to either Dungowan Lane for kerbside collection.

- **Ground floor** – 2 approved apartments have been combined into one 3 bedroom apartment; adjustment to fire stair location and lobby; adjustment to wall and balcony area;

- **Levels 1** – 3 approved apartments have been combined into 2 units comprising 1 x 4 bedroom unit and 1 x 1 bedroom unit; adjustment to balcony sizes and lobby stair area;

- **Level 2** – 3 approved units retained, with the layout modified comprising 2 x 2 bed and 1 x 1 bedroom unit; adjustment to balcony sizes and lobby stair area;

- **Level 3** – 3 approved units retained with the layout modified comprising 1 x 2 bedroom and 2 x 1 bedroom units; adjustment to balcony sizes and lobby stair area;

- **Level 4** – 2 approved units retained with the layout modified comprising 1 x 3 bedroom unit and 1 x 1 bedroom unit; adjustment to balcony sizes and lobby stair area;

- **Elevations** – revised window locations and detailing as depicted on the elevation plans prepared by ARC Architects. Balcony sizes modified as indicated on the plans and elevations.

This application also requests that condition 1 be deleted in its entirety. All the balconies as proposed located to the to the rear southern elevation comply with the 9.5 metre setback requirement to 27 Ashburner Street pursuant to this condition, however at the first and second floor levels it is proposed to enclose part of the balconies, which results in a minor encroachment into the rear building line 11 metre setback requirement to 27 Ashburner Street, resulting in a setback of 10 metres to the rear southern boundary with 27 Ashburner Street at these two levels only. Given the substantial separation distances to this property (in excess of Council's current DCP and SEPP 65 Apartment Design Guide Standards), and integrated privacy screen measures to the two proposed rear facing southern windows at the first and second floor levels it considered that a rear building line setback requirement of 11 metres is not warranted, on this basis we request that this condition is deleted.

Furthermore, we request that Condition 119 be deleted as per the approval. The level 4 approved planter box and associated deck area is proposed to form part of a common lobby area, which results in a far more functional and efficient use of this space.

3. APPLICATION FOR MODIFICATION

SECTION 4.56 ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

The application is made pursuant to Section 4.56 (Previously Section 96(AA) of the EP&A Act 1979 (as amended). Section 4.56 of the Act provides:

> *(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court*

and subject to and in accordance with the regulations, modify the development consent if:

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

(b) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, and

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

(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and

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

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

(1B) (repealed)

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

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

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

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

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

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

(4) (Repealed)

In this instance it is not considered the proposed design modifications to the drawings substantially alter or change the development as consented. The land use outcome remains within the ambit of the approved land use as referred to within the notice of determination. The building form, bulk and scale remain as per the original consent. The most significant changes are in relation to the internal floorplan layouts, revised floor to ceiling heights, roof form and external window placements.

A consideration of whether the development is substantially the same development has been the subject of numerous decisions by the Land & Environment Court and by the NSW Court of Appeal in matters involving applications made pursuant to S.96 of the Act. *Sydney City Council v Ilenace Pty Ltd (1984) 3 NSWLR 414* drew a distinction between matters of substance compared to matters of detail. In *Moto Projects (No.2) Pty Ltd v North Sydney Council (1999) 106 LGERA 298* Bignold J referred to a requirement for the modified development to be substantially the same as the originally approved development and that the requisite finding of fact to require a comparison of the developments. However, Bignold noted the result of the comparison must be a finding that the modified development is 'essentially or materially' the same as the (currently) approved development. Bignold noted;

> *"The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the development being compared in their proper contexts (including the circumstances in which the development consent was granted)."*

In *Basemount Pty Ltd & Or v Baulkam Hills Shire Council NSWLEC 95* Cowdroy J referred to the finding of Talbot J in *Andari – Diakanastasi v Rockdale City Council* and to a requirement that in totality the two sets of plans should include common elements and not be in contrast to each other. In *North Sydney Council v Michael Standley & Associates Pty Ltd (1998) 43 NSWLR 468; 97 LGRERA 443* Mason P noted:

> *"Parliament has therefore made it plain that consent is not set in concrete. It has chosen to facilitate the modification of consents, conscious that such modifications may involve beneficial cost savings and/or improvements to amenity. The consent authority can withhold its approval for unsuitable applications even if the threshold of subs (1) is passed.*
>
> *I agree with Bignold J in Houlton v Woollahra Municipal Council (1997) 95 LGRERA 201 who (at 203) described the power conferred by s.102 as beneficial and facultative. The risk of abuse is circumscribed by a number of factors. Paragraphs (a), (b) and (c) of subs (1) provide narrow gateways through which those who invoke the power must first proceed. Subsection (1A) and subs (2) ensure that proper notice is given to persons having a proper interest in the*

> *modified development. And there is nothing to stop public consultation by a Council if it thinks that this would aid it in its decision making referable to modification. Finally, subs (3A), coupled with the consent authorities discretion to withhold consent, tend to ensure that modifications will not be enterprised, nor taken in hand, unadvisedly, lightly or wantonly. Naturally some modifications will be controversial, but decision making under this Act is no stranger to controversy."*

Senior Commission Moore in *Jaques Ave Bondi Pty Ltd v Waverly Council (No.2) (2004) NSWLEC 101* relied upon *Moto Projects* in the determination, involving an application to increase the number of units in this development by 5 to a total of 79. Moore concluded the degree of change did not result in the a development which was not substantially the same, despite the fact that in that case the changes included an overall increase in height of the building. Moore relied upon a quantitative and qualitative assessment of the changes as determined by the Moto test.

In my opinion a quantitative and qualitative assessment of the application is that it remains substantially the same. The approved land use is not altered as a consequence of the changes as proposed. The approved bulk and scale of the building remain as approved by the consent and the plans as approved.

It is submitted the Council can be satisfied that the proposal to changes remain substantially the same and within the ambit of the consent as issued for the following reasons:

- The design changes are minor with the substantial change confined to the internal layout of the apartments, balcony and window arrangements and revised roof form. The public perception of the land use (residential flat building) will not change.

- The changes to the basement accord with the requirement of the Council policy in terms of parking provision.

- A Design Verification Statement and assessment with respect to the relevant provisions pursuant to the SEPP 65 Apartment Design Guide accompanies this application.

4.0 MATTERS FOR CONSIDERATION PURSUANT TO S4.15 (PREVIOUSLY S79C) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 AS AMENDED

The following matters are to be taken into consideration when assessing an application pursuant to S4.15 of the Environmental Planning and Assessment Act 1979 (as amended):

The provisions of any environmental planning instrument, proposed instrument that has been the subject of public consultation under this Act and any development control plan.

4.1 Manly Local Environmental Plan 2013

Floor Space Ratio

No change is proposed to the approved Floor Space Ratio as approved by the Land and Environment Court pursuant to the S96 AA Application granted in 2012. A gross floor area schedule prepared by ARC Architects confirms that the approved FSR 1.78:1 is adhered to.

Building Height

The development as approved exceeds the maximum building height control of 11 metres pursuant to Clause 4.3 of the Manly LEP 2014. As demonstrated on the section plans prepared by Arc Architects, the lift overrun results in a further increase of the approved building height (RL21.20) by a further 1 metre (RL22.20). The roof form of the development conforms to the approved building height of RL21.20).

The objectives of the building height control are identified as follows:

> *(1) The objectives of this clause are as follows:*
>
> *(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
>
> *(b) to control the bulk and scale of buildings,*
>
> *(c) to minimise disruption to the following:*
>
> *(i) views to nearby residential development from public spaces (including the harbour and foreshores),*
>
> *(ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
>
> *(iii) views between public spaces (including the harbour and foreshores),*
>
> *(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
>
> *(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*
>
> *(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

- Despite the variation proposed to the building height control, the lift overrun will not visible from the street. This is demonstrated in the street photomontage as prepared by ARC Architects.

- The lift overrun does not unduly add to the overall bulk, scale and appearance of the building as presented to the street. The height is entirely consistent with the built form characteristics established by neighbouring developments and development generally within the sites visual catchment.

- The view loss analysis prepared by ARC Architects demonstrates that a view sharing scenario is maintained to neighbouring residential apartments 42-44 Victoria Parade. Accordingly, we have formed the considered opinion that a view sharing scenario is achieved having regard to the Planning Principle in the matter of *Tenacity Consulting v Warringah [2004] NSW LEC 140*.

- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191* I am of the opinion that the impacts arising from the building height to neighbouring apartments are acceptable and that most observers would not find the height of the proposed development offensive, jarring or unsympathetic in a streetscape context nor the built form characteristics of development within the sites visual catchment. Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings.

- Having regard to the planning principle established by *Veloshin v Randwick City Council [2007] NSWLEC 428* this is not a case where the difference between compliance and non-compliance is the difference between good and bad design.

- Having regard to *Four2Five Pty Ltd v Ashfield Council (2015) NSW LEC 1009* I am of the opinion that compliance with the height of building standard contained within Clause 4.3 of MLEP 2013 is unreasonable and unnecessary in the circumstances of this application and the site given the relationship of the proposed height of the building to its neighboring sites and the general paucity of amenity impacts to neighbouring properties.

Given recent Land and Environment Court caselaw and that this application constitutes a Section 4.56 Modification Application, a formal Clause 4.6 request to vary the building height development standard is not required.

4.2 Manly Development Control Plan 2013

The overall bulk and scale of the development as assessed under pursuant to the original DA approval (as subsequently modified) is not substantially altered as a result of the proposed modifications. Notwithstanding, the following matters are considered:

View Sharing

Pursuant to Part 3.4 of the DCP all new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties. Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.

An assessment of the impact of the minor building footprint modifications on the established view lines from 42-44 Victoria Parade has been undertaken and is contained in the view analysis prepared by ARC Architects, which accompanies this submission. The Land and Environment Court approval established a view line corridor across the site frontage to protect views from the relevant apartments in 42-44 Victoria Parade across the site frontage towards Manly Beach and the Ocean.

The accompanying view analysis prepared by ARC Architects demonstrates that the established view lines of Manly Beach across the subject site obtained from the relevant apartments at each of the levels within 42-44 Victoria Parade are retained and protected as a result of the proposed design modifications. Accordingly, we have formed the considered opinion that a view sharing scenario is achieved having regard to the Planning Principle in the matter of *Tenacity Consulting v Warringah [2004] NSW LEC 140*.

Access to Sunlight

Pursuant to Part 3.4.1 of the DCP, elevational shadow diagrams prepared by ARC Architects of the east facing windows to No.42-44 Victoria Parade indicate that the design as modified results in some minor additional shadow impact to some of the upper level east facing apartment windows and balconies of the neighbouring property located 42-44 Victoria Parade in comparison to the approved drawings, during the morning hours (9am to 12 Midday only).The additional impact occurs due to the increase in floor to ceiling heights to ensure compliance with the current ADG standards and associated roof form modification (hipped to a flat roof form).

Traffic and Parking

The accompanying Traffic and Parking Report prepared by Inroads Group demonstrates that as a result of the proposed modifications, the development will provide several improvements to the car parking layout in comparison to the previously approved scheme. The provision of off-street resident and visitor parking accords with Schedule 3 of the Manly DCP 2013 detailed as follows:

Unit Type	**DCP Control**	**Requirement**
One Bedroom & Studio	1 space per dwelling	5 x 1 = 5 spaces
Two Bedroom	1 space + 0.2 spaces per dwelling	3 x 1.2 = 3.6 spaces (round up to 4 spaces)
Three + Bedroom	1 space + 0.5 spaces per dwelling	3 x 1.5 = 4.5 spaces (round up to 5 spaces)
Visitor	0.25 spaces per dwelling	11 x 0.25 = 2.75 spaces
Total		**17 Spaces Required (14 for residents and 3 for visitor)** **Application Provides for 22**

		spaces (19 for residents and 3 for visitor)

The key improvements are summarised in the traffic and parking report prepared by Inroads are detailed as follows:

- *Increased on-site parking provision;*
- *Improved vehicle manoeuvrability to/from the visitor car parking spaces accessed via Dungowan Lane (through recessing these spaces and increasing the effective aisle width);*
- *Refinement of positions and dimensions of parking spaces within the basement, to provide necessary clearances and improve vehicle manoeuvrability to/from the spaces;*
- *Refinement of mechanical parking installation arrangements, to provide clearances and improve vehicle manoeuvrability to/from the car stacker;*
- *Rationalisation of the accessible parking spaces, so the two (2) spaces proposed share the shared area, and are both in convenient proximity to the lift; and*
- *Removal of the parking space at the base of the ramp, immediately adjacent to the ramp, which would have been very difficult for a vehicle to access or egress.*

4.3 State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development and the Apartment Design Guide

With respect to the revised apartment layouts an assessment of compliance pursuant to the relevant provisions of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and the NSW Apartment Design Guide has been undertaken and is appended to this letter. A SEPP 65 Design Verification Statement prepared by ARC Architects also accompanies this submission.

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

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

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

5.0 CONCLUSION

Pursuant to section S.4.56 of the Environmental Planning and Assessment Act 1979 the consent authority can be satisfied that the modified consent as sought by this submission is substantially the same development as referred to in the original application. For the reasons outlined above we consider the amendments to the detail of the consent are reasonable.

We would be pleased to clarify or expand upon this submission as maybe necessary.

Yours sincerely

Kate Fleming
Director
Boston Blyth Fleming Pty Ltd

ENCLOSURES

1. *Revised architectural details prepared by ARC Architects*
2. *Revised Traffic & Parking Assessment - Inroads*
3. *Revised BASIX Certificate*
4. *SEPP 65 Design Verification Statement prepared by ARC Architects*
5. *Hydraulic details prepared by* FJA Consulting
6. *SEPP 65 Apartment Design Guide Assessment prepared by BBF Town Planners*

SEPP 65 Apartment Design Guide Assessment

The following is a response to section 30 (2)(b) State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development 2015.

The proposed amendments to the layout of the apartments has been undertaken in relation to their compliance pursuant to the relevant design criteria and design guidance of Part 4 – Designing the Building. Part 3 of the Design Guide is not considered relevant with respect to the proposed modifications to the approved DA.

Part 4 – Designing the Building

This part responds to Part 4 – Designing the Building as set out in the following tables:

4A Solar and Daylight Access
Objective 4A-1 To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space
Design Criteria 1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas 2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter 3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter
Response The site is north/south in terms of its orientation. The living rooms and private open spaces to 63% (7) of the of the 11 apartments will receive a minimum of 3 hours of direct sunlight between 9am and 3pm mid winter. These seven apartments all face due north. A variation to the ADG requirement is sought on the basis of the constrained north/south orientation of the site. It should be noted that the revised floorplan layouts result in an improvement on the percentage of apartments (living rooms and private open spaces) receiving 3 hours of direct sunlight in comparison to the previously approved design, which resulted in 8 out of the 13 apartments (61%) facing due north and receiving 3 hours of direct sunlight.
4B Natural Ventilation
Objective 4B-1 All habitable rooms are naturally ventilated
Response Achieved. All habitable rooms to the amended apartment layouts are naturally ventilated.
4B Natural Ventilation
Objective 4B-2 The layout and design of single aspect apartments maximises natural ventilation
Response Achieved. The layout and design of the apartments as amended, maximise the natural ventilation achieved to the units. All the apartments are naturally cross ventilated.

Objective 4B-3

The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents

Design Criteria

1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allow adequate natural ventilation and cannot be fully enclosed

2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line

Response

Achieved. All of the amended apartments are naturally cross ventilated. No cross over or cross through apartments are provided.

4C Ceiling Heights

Objective 4C-1

Ceiling height achieves sufficient natural ventilation and daylight access

Design Criteria

Measured from finished floor level to finished ceiling level, minimum ceiling heights are:
These minimums do not preclude higher ceilings if desired

Response

Achieved. The floor to ceiling heights have been modified to comply with the ADG standards.

4C Ceiling Heights

Objective 4C-2

Ceiling height increases the sense of space in apartments and provides for well proportioned rooms

Design Guidance	**Response**

Response

Achieved. The design now complies with the ADG ceiling height standards (2.7 metres).

Objective 4C-3

Ceiling heights contribute to the flexibility of building use over the life of the building

Design Guidance	**Response**

Response

Achieved. The modifications result in revised floor to ceiling heights to comply with the current ADG Standards.

4D Apartment Size and Layout

Objective 4D-1

The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity

Design Criteria

1. Apartments are required to have the following minimum internal areas:
   The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m^2 each
   A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m^2 each
2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms

Response

Achieved. All revised apartments meet the minimum internal area requirements as follows:

Apartment G (3 bed) = 185sqm (required 90sqm)

Apartment 1a (4 bed) = 190sqm (required 102 sqm)

Apartment 1b (1 bed) = 72sqm (required 50sqm)

Apartment 2a (2 bed) = 92sqm (required 70sqm)

Apartment 2b (2 bed) = 100sqm (required 70sqm)

Apartment 2c (1 bed) = 71sqm (required 50sqm)

Apartment 3a (1 bed) = 72sqm (required 50sqm)

Apartment 3b (2 bed) = 74sqm (required 70sqm)

Apartment 3c (1 bed) = 53sqm (required 50sqm)

Apartment 4a (3 bed) = 131sqm (required 90sqm)

Apartment 4b (1 bed) = 53sqm (required 50sqm)

4D Apartment Size and Layout

Objective 4D-2

Environmental performance of the apartment is maximised

Design Criteria

1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height
2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window

Response

Achieved. The maximum habitable room depth to the modified apartments meets the 8 metre requirement from a window.

Objective 4D-3

Apartment layouts are designed to accommodate a variety of household activities and needs

Design Criteria

1. Master bedrooms have a minimum area of 10m^2 and other bedrooms 9m^2 (excluding wardrobe space)
2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space)
3. Living rooms or combined living/dining rooms have a minimum width of:
   - 3.6m for studio and 1 bedroom apartments
   - 4m for 2 and 3 bedroom apartments
4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.

Response

Achieved. All revised apartment layouts meet the minimum width and area requirements.

4E Private Open Space and Balconies

Objective 4E-1

Apartments provide appropriately sized private open space and balconies to enhance residential amenity

Design Criteria

1. All apartments are required to have primary balconies as follows:
   The minimum balcony depth to be counted as contributing to the balcony area is 1m
   1 bedroom 8sqm depth 2 metres
   2 bedroom 10sqm depth 2 metres
   3+ 12 sqm minimum depth 2.4 metres
2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m^2 and a minimum depth of 3m.

Response

Achieved. All revised apartments are afforded with generous areas of private open space in the form of balconies, compliant with the area and depth requirements.

Objective 4E-2

Primary private open space and balconies are appropriately located to enhance liveability for residents

Design Guidance	**Response**

Response

Achieved. All balconies are appropriately located off the main living areas.

4E Private Open Space and Balconies

Objective 4E-3

Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building

Response

Achieved.

Objective 4E-4

Private open space and balcony design maximises safety

Response

Achieved.

4F Common Circulation and Spaces

Objective 4F-1

Common circulation spaces achieve good amenity and properly service the number of apartments

Design Criteria

1. The maximum number of apartments off a circulation core on a single level is eight
2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40

Response

Remains as per the original approval. No change proposed.

4G Storage

Objective 4G-1

Adequate well designed storage is provided in each apartment

Design Criteria

1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:

Studios	4m3
1 bedroom apartments	6m3
2 bedroom apartments	8m3
3 + bedroom apartments	10m3

At least 50% of the required storage is to be located within the apartment

Response

As detailed on the area schedule prepared by ARC Architects all apartments are afforded with dedicated storage areas in the basement, compliant with the minimum standards.

4H Acoustic Privacy

Objective 4H-1

Noise transfer is minimised through the siting of buildings and building layout

Objective 4H-2

Noise impacts are mitigated within apartments through layout and acoustic treatments

Response

Noted and achieved to revised apartment layouts.

4J Noise and Pollution

Objective 4J-1

In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings

4J Noise and Pollution

Objective 4J-2

Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission

Response

As per the DA Consent recommended acoustic measures.

4K Apartment Mix

Objective 4K-1

A range of apartment types and sizes is provided to cater for different household types now and into the future

Objective 4K-2

The apartment mix is distributed to suitable locations within the building

Response

The apartment mix is to be modified and results in the mix as follows:

- 5 x 1 bedroom apartments
- 3 x 2 bedroom apartments
- 2 x 3 bedroom apartments
- 1 x 4 bedroom apartment

The proposed modifications introduce three and a four bedroom apartment into the unit mix to cater for a wider range of housing types and sizes.

4L Ground Floor Apartments

Objective 4L-1

Street frontage activity is maximised where ground floor apartments are located

Response

N/A. No change proposed as per the original DA Consent.

4M Facades

Objective 4M-1

Buildings facades provide visual interest along the street while respecting the character of the local area

4M Facades

Objective 4M-2

Buildings functions are expressed by the facade

Response

The application is accompanied by a modified schedule of materials and finishes, including revised window treatments.

4N Roof Design

Objective 4N-1

Roof treatments are integrated into the building design and positively respond to the street

4N Roof Design

Objective 4N-2

Opportunities to use roof space for residential accommodation and open space are maximised

Objective 4N-3

Roof design incorporates sustainability features

Response

The roof design has been modified to incorporate a flat roof treatment, rather than a hipped roof form. The proposed roof is not proposed to be accessible other than for maintenance purposes.

4O Landscape Design

Objective 4O-1

Landscape design is viable and sustainable

Objective 4O-2

Landscape design contributes to the streetscape and amenity

4P Planting on Structures

Objective 4P-1

Appropriate soil profiles are provided

4P Planting on Structures

Objective 4P-2

Plant growth is optimised with appropriate selection and maintenance

4P Planting on Structures

Objective 4P-3

Planting on structures contributes to the quality and amenity of communal and public open spaces

Response

No modifications are proposed to the intent of the approved landscape design pursuant to the DA Consent.

4Q Universal Design

Objective 4Q-1

Universal design features are included in apartment design to promote flexible housing for all community members

Objective 4Q-2

A variety of apartments with adaptable designs are provided

Objective 4Q-3

Apartment layouts are flexible and accommodate a range of lifestyle needs

Response Achieved Apartment G is to be adaptable in accordance with the 10% provision.
4R Adaptive Reuse
Objective 4R-1 New additions to existing buildings are contemporary and complementary and enhance an area's identify and sense of place
4R Adaptive Reuse
Objective 4R-2 Adapted buildings provide residential amenity while not precluding future adaptive reuse
Not Applicable
4S Mixed Use
Objective 4S-1 Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement
Objective 4S-2 Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents
Not Applicable
4T Awnings and Signage
Objective 4T-1 Awnings are well located and complement and integrate with the building design
Not Applicable
4U Energy Efficiency
Objective 4U-2 Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer
Objective 4U-3 Adequate natural ventilation minimises the need for mechanical ventilation
Response: Refer to Amended BASIX Certificate
4V Water Management and Conservation
Objective 4V-1 Portable water use is minimised
4V Water Management and Conservation
Objective 4V-2 Urban stormwater is treated on site before being discharged to receiving waters

Objective 4V-3 Flood management systems are integrated into site design
Response Modified stormwater arrangements are proposed as part of this application.
4W Waste Management
Objective 4W-1 Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents
4W Waste Management
Objective 4W-2 Domestic waste is minimised by providing safe and convenient source separation and recycling
Response It is proposed to relocate the waste storage area into the basement.
4X Building Maintenance
Objective 4X-1 Building design detail provides protection from weathering
Objective 4X-2 Systems and access enable ease of maintenance
Objective 4X-3 Material selection reduces ongoing maintenance costs
Response A modified schedule of materials and finishes accompanies the Application.