

23 Fisher Road, Dee Why

Section 4.55(2) Modification to DA2018/1574

On behalf of
Hamptons by Rose Pty Ltd
February 2021



Project Director



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February 2021

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* This document is for discussion purposes only unless signed and dated by the persons identified. This document has been reviewed by the Project Director.

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- **Appendix 1.** Architectural Plans;
- **Appendix 2.** Schedule of Amendments;
- **Appendix 3.** Condition 22 Response;
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- **Appendix 5.** ADG Compliance Assessment;
- **Appendix 6.** BASIX Certificate;
- **Appendix 7.** Landscape Plan;
- **Appendix 8.** Arboricultural Impact Assessment;
- **Appendix 9.** Contamination Statement;
- **Appendix 10.** Geotechnical Statement;
- **Appendix 11.** Traffic Statement; and
- **Appendix 12.** Merits Assessment against Clause 4.6 – Height.

1 Introduction

This *Statement of Environmental Effects (SEE)* has been prepared by *Mecone NSW Pty Ltd* on behalf of *Hamptons by Rose Pty Ltd (Rose Pty Ltd)* to support a Section 4.55(2) modification to the *Northern Beaches Council* (the **Council**) in relation to the site at 23 Fisher Rd, Dee Why (the **site**) (Lot 11, DP 577062).

The application proposes to modify Development Consent (DA/2018/1574), granted on 18 June 2019 for:

'Construction of a mixed development comprising three residential flat building, commercial use of a heritage listed building, car parking, infrastructure and landscaping'.

Since the original approval was issued, a modification to the original consent has been granted for minor design changes. The modification relates to MOD2020/0097 which was approved by the *Northern Beaches Council* on the 15 April 2020.

Specifically, the subject modification seeks approval for the following changes to the approved development conditions and administrative changes:

- Internal reconfigurations, adjustment to levels and construction of an additional level on Buildings A, B and C to accommodate an additional 21 residential apartments (resulting in total of 147 units);
- Removal of rooftop garden on Building A;
- Modification to balcony design and installation of new frames within balcony areas;
- Increase to the basement size and internal reconfigurations to accommodate 34 additional car spaces and adjustment of basement levels in Buildings A, B and C;
- Removal of two (2) trees (Nos. 58A and 61A) to accommodate basement level excavation proposed;
- Modification to the lobby design of Buildings B and C;
- Amendment to Condition 1 and 1A to reflect proposed modifications in the approved drawings and supporting documentation;
- Satisfaction of and subsequent amendment to Condition 22 as a result of the provision of updated architectural plans;
- Satisfaction of and subsequent amendment to Condition 23 as a result of the provision of updated landscape plans; and
- Amendment to Condition 88(a) 'Parking' to integrate an additional 34 car spaces within Basement Level 1 with modest change to basement footprint.

The SEE includes an assessment of the proposed modification in terms of the matters for consideration as listed under Section 4.15 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* and should be read in conjunction with information annexed to this report and outlined in the Table of Contents.

Specifically, the SEE;

- a. Describes the site and local context;
- b. Identifies the proposed modifications;
- c. Identifies and addresses all relevant planning controls and policies;
- d. Identifies and addresses all potential environmental impacts of the proposal;

- e. Proposes measures for minimising or managing the potential environmental impacts; and
- f. Demonstrates that the modification meets the test of "substantially the same development" under Section 4.55 of the EP&A Act.

A detailed description of the proposed modification is outlined in **Section 3**, a planning assessment is provided in **Section 4** and an environmental assessment is provided in **Section 5**.

The SEE is also supported by the following architectural plans and environmental assessment reports, which are provided separately;

- **Appendix 1.** Survey Plan;
- **Appendix 2.** Architectural Plans;
- **Appendix 3.** Schedule of Amendments
- **Appendix 4.** Schedule of Amendments to satisfy Condition 22;
- **Appendix 5.** Schedule of Amendments to satisfy Condition 23;
- **Appendix 6.** SEPP65 Report;
- **Appendix 7.** BASIX Certificate;
- **Appendix 8.** Landscape Plans;
- **Appendix 9.** Arboricultural Report;
- **Appendix 10.** Contamination Report;
- **Appendix 11.** Geotechnical Investigation Report;
- **Appendix 12.** Traffic Statement;
- **Appendix 13.** Height - Merits Assessment against principles of Clause 4.6;

1.1 Proponent and Project Team

The Development Application and SEE Report have been prepared on behalf of the applicant, *Rose Pty Ltd*. The expert consultant team is listed in **Table 1** below.

Table 1. Project Team	
Item	Consultant
Urban Planning Assessment	<i>Mecone NSW Pty Ltd</i>
Architectural Design	<i>Giles Tribe Pty Ltd</i>
Arboricultural	<i>Bluegum Tree Care and Consultancy</i>
Contamination	<i>Coffey Services Australia Pty Ltd</i>
Geotechnical	<i>Coffey Services Australia Pty Ltd</i>
Landscape Plan	<i>Giles Tribe Pty Ltd</i>
SEPP 65 Report	<i>Giles Tribe Pty Ltd</i>
Surveyor	<i>Veris Ltd</i>
Traffic	<i>Colston Budd Rogers & Kafes Pty Ltd</i>

1.2 Development Approvals and Project History

1.2.1 DA2018/1574

The original development consent DA2018/1574 was approval by the *North Sydney Planning Panel* on the 18 June 2019 for construction of a mixed-use development comprising three residential flat buildings, commercial use of a heritage listed building, car parking, infrastructure and landscaping at 23 Fisher Road, Dee Why.

Specifically, the development comprised;

- Three (3) x residential flat buildings; comprising 126 dwellings and basement car parking;
- The retention of Pacific Lodge, to be used for a commercial purpose subject to a future development application;
- Basement car parking for 191 vehicles; comprising 151 dedicated resident car spaces, 12 dedicated commercial spaces for Pacific Lodge, 26 dedicated visitor parking spaces and 2 dedicated spaces for small delivery vehicles;
- Internal private service laneway; and
- Site works and associated landscaping.



Figure 1. Level 1 Plan Approved under DA/2018/1574 (extract from A1.01)

Source: Rose Architectural Design

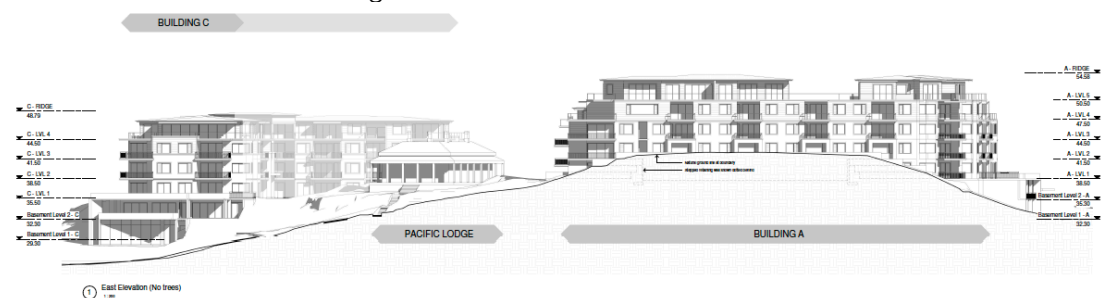


Figure 2. Eastern Elevation Approved under DA/2018/1574 (extract from A3.02)

Source: Rose Architectural Design

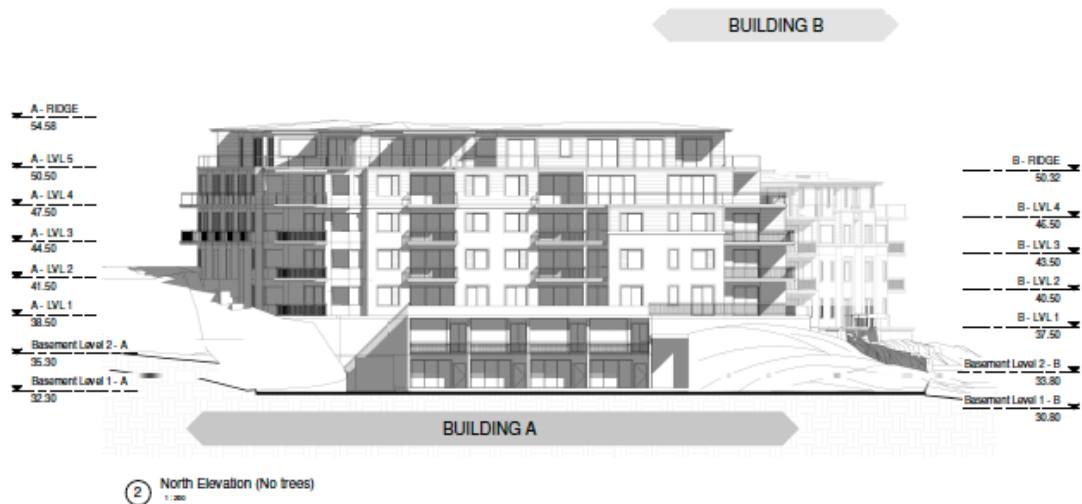


Figure 3. Northern Elevation Approved under DA/2018/1574 (extract from A3.02)
 Source: Rose Architectural Design

1.3 MOD2020/0097

On 15 April 2019, a Section 4.55(2) modification was approved by the *Northern Beaches Council*. The application approved the following changes to the Development Consent:

- Amendment to **Condition 1** 'Approved Plans and Supporting Documentation' to reflect 1A to reflect the revised plans and Schedule of Colours and Materials to reflect the following modifications:
 - The deletion of the residential common room, to be replaced with a sub floor area that is setback 1m from the alignment of the balcony above;
 - The deletion of the paved area adjacent to the common room, with the retention of natural ground levels in this area;
 - An adjustment to the setback of the south-eastern corner of the balcony associated with Apartments C.G01, such that no part of the structure is within 4m of the eastern property boundary, whilst ensuring the retention of the proposed planter boxes;
 - An adjustment to the setback of the south-eastern corner of the balcony and courtyard associated with Apartments C.101, such that no part of the structure is within 6m of the eastern property boundary, whilst ensuring the retention of the proposed planter boxes;
 - The incorporation of 1.7m high privacy screens to separate the courtyards/balconies adjacent to Apartments C.G01, C.G02, C.101, C.102, C.401 and C.402 and Apartment A;
 - The incorporation of a 1.7m high privacy screen on the eastern elevation of the balcony associated with Apartment C.204;
 - The deletion of the balconies (associated with Bedroom 1 in C.110, Bedroom 2 in C.112, Bedroom 2 in B.101, Bedroom 2 in B.106) with the sliding doors to be replaced with windows of the same size and design as the respective windows on the level above;
 - The incorporation of a light-weight roof above the two letter box areas; and

- The incorporation of a garage door at the entrance of the garage, setback 1m from the façade of the parapet above, that automatically opens as vehicles approach from both inside and outside the development between 7am and 9pm, and when the commercial tenancy is open for trading.
- Deletion of **Condition 20** as it was made redundant through the provision of the agreed upon Schedule of Colours and Finishes which is included in Condition 1A;
- Amendment to **Condition 21** to reference the BASIX Certificate included under Condition 1A;
- Amendments to **Condition 22** by the deletion of **Condition 22(i)** and **22(k)**. With respect to Condition 22(i), an additional condition (Condition 97) was imposed which addresses the intent of Condition 22(i) to restrict the hanging of washing and the storing of items in a terrace or on a balcony if it can be seen from the street or common property;
- Amendment to **Condition 22(k)** by way of additional condition (Condition 98) is to be imposed which addresses the intent of Condition 22(k) to restrict direct access from the pedestrian exit to Civic Drive;
- Amendment to **Condition 88(a)** 'Parking' to update the increased number of parking spaces within Basement Level 1;

2 The Site

2.1 Site Location and context

The site is located at 23 Fisher Road, Dee Why and is legally known as Lot 11 DP 577062. The site covers an area of approximately 10,620m² and is currently occupied by a disused aged care and assisted living facility previously operated by the Salvation Army.

The site is undulating in nature providing a relatively steep topography owing to its location on the spur between major hills to the west and south of Dee Why town centre basin. The site ground level is elevated above the adjoining street level in most locations, especially along the St David Avenue frontage, where retaining brick wall, rock faces, escarpments and outcrops occur at varying heights.

Figure 1 and **2** below identify the site's location in a local and site-specific context.



Figure 4. Local Context Map
Source: Mecone MOSAIC

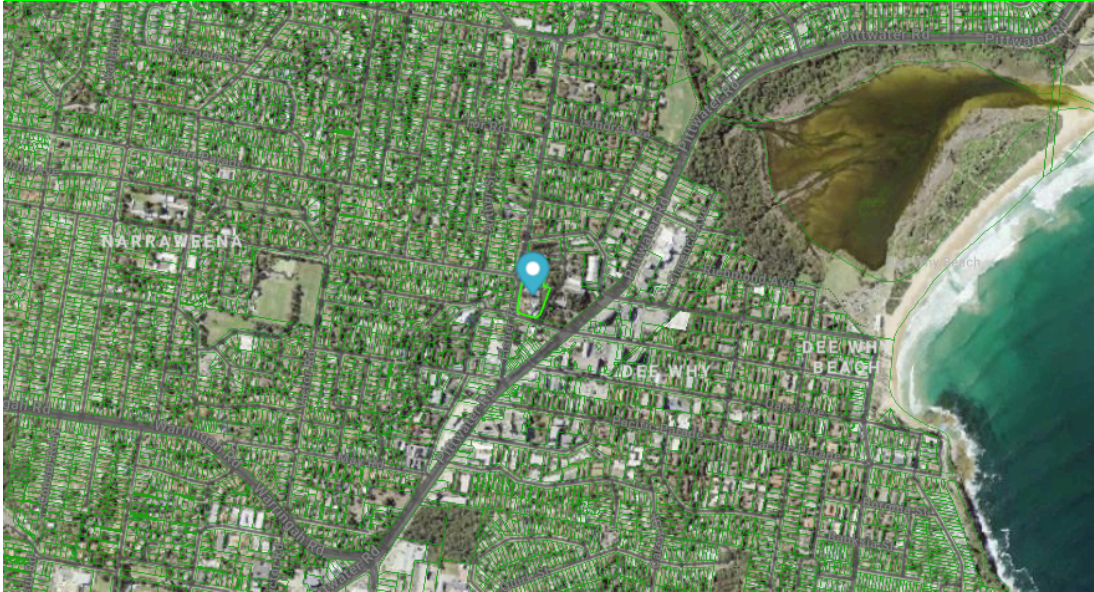


Figure 5. Site Locality Map
Source: Mecone MOSAIC

2.2 Site Description

Table 2 provides the legal description, and a brief summary of the site and surrounding context.

Table 2. Site Description	
Item	Description
Legal Description	Lot 11 DP 577062
Total Area	10,620m ²
Location	23 Fisher Road, Dee Why
Existing Zone	B4 Mixed Use
Surrounding Context	<ul style="list-style-type: none"> • North: Various uses are located to the north including a three storey residential flat building and a new Northern Beaches Council owned building operated by PCYC. • East: Civic Parade, Council carpark, Dee Why Library and Northern Beaches Council – Dee Why Office. • South: Beyond St David Avenue, Dee Why Police Station, St Davids Uniting Church Centre and commercial uses at 1-3 storeys in height are located. • West: Beyond Fisher Road to the west, low rise residential area including 1-3 storey dwellings and flat buildings are located.
Public Transport	Bus services along Fisher Road (directly west of site) providing regular services to Manly, Frenchs Forest, and Sydney CBD. Additional B-line bus services along Pittwater Road (less than 100m south-east of site) providing services to Warringah Mall, Palm Beach, and Mona Vale.

Table 2. Site Description

Topography	<p>The site is undulating in nature providing a relatively steep topography owing to its location on the spur between major hills to the west and south of Dee Why town centre basin.</p> <p>The site ground level is elevated above the adjoining street level in most locations, especially along the St David Avenue frontage, where retaining brick wall, rock faces, escarpments and outcrops occur and varying heights.</p>
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3 The Proposal

The proposed modifications to the approved Development Consent DA2018/1574, are being sought under Section 4.55(2) of the EP&A Act, and are discussed in detail in the subsections below.

3.1 Physical Modifications

A number of proposed physical modifications to the Development Consent DA2018/1574, are being sought under Section 4.55(2) of the Act. Importantly, the proposed modifications have been carefully designed to ensure the development proposed remains '*substantially the same*' as approved and as viewed from the public domain.

A detailed schedule of amendments has been prepared by *Giles Tribe Pty Ltd* and is attached in **Appendix 2**. In summary, the proposed modifications generally include;

- Internal reconfigurations, adjustment to levels and construction of an additional level on Buildings A, B and C to accommodate an additional 21 residential apartments (resulting in total of 147 units);
- Removal of rooftop garden on Building A;
- Modification to balcony design and installation of new frames within balcony areas;
- Increase to the basement size and internal reconfigurations to accommodate 34 additional car spaces and adjustment of basement levels in Buildings A, B and C;
- Removal of two (2) trees (Nos. 58A and 61A) to accommodate basement level excavation proposed;
- Modification to the lobby design of Buildings B and C;
- Amendment to Condition 1 and 1A to reflect proposed modifications in the approved drawings and supporting documentation;
- Satisfaction of and subsequent amendment to Condition 22 as a result of the provision of updated architectural plans; and
- Satisfaction of and subsequent amendment to Condition 23 as a result of the provision of updated landscape plans.

Additionally, given the economic impact of Covid19 on the NSW economy, and the fact that the original approval did not realise the site's full FSR permissible, the subject proposal also will strongly contribute to the local economic and housing targets for Northern Beaches Council.

3.2 Administrative Modifications

The *Sydney North Planning Panel* approved the original development application DA/2018/1574 subject to conditions in relation to the proposed development.

The proposed modifications to the development consent are sought under Section 4.55(2) of the EP&A Act and are predominantly physical in nature and involve modifications to the design to improve the usability and internal amenity of the development for its residents, and realise the full permissible FSR. The relevant proposed plans (changes clouded), prepared by *Giles Tribe Pty Ltd*, are found at **Appendix 1**.

The Conditions of Consent stipulate that Conditions 22 and 23 are required to be addressed prior to the issuance of the Construction Certificate. The modifications relate to architectural and landscaping amendments including but not limited to retaining walls, deletion of the common room, adjustments to setbacks, planter boxes and letter boxes, incorporation of privacy screens and garage roller door. These modifications are administrative in nature and in alignment with Council requests and therefore will therefore result in beneficial improvements to the design. The supporting documentation attached to this SEE are considered to satisfy the conditions and address the advised amendments as listed under Conditions 22 and 23. Refer to **Appendix 3** and **Appendix 4** for detailed discussion.

To reflect the physical modifications as outlined in Section 3.1 above, modification to the below conditions is required to reflect the submission of updated documents and drawings. The following drawings and revised supporting documentation are to be updated to form part of the development consent moving forward:

- **Condition 1(a) and 1(b)** - Approved Plans and Supporting Documentation;
- **Condition 1A** – Modification of Consent – Approved Plans and supporting documentation;
- **Condition 22** - Amendments to Approved Plans;
- **Condition 23** - Amendments to Approved Landscape Plans; and
- **Condition 88** – Parking.

The modifications are proposed as follows (new in ***bold/italic*** and deletions in ~~strikethrough~~):

1. Approved Plans and Supporting Documentation

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

Architectural Plans – Endorsed with Council’s stamp		
Drawing No.	Dated	Prepared By
Site Plan, A1.01, revision C	24 April 2019	Rose Architectural Design
West Elevation & South Elevation, A3.02, revision C	24 April 2019	Rose Architectural Design
East Elevation & North Elevation, A3.04, revision C	24 April 2019	Rose Architectural Design
Level 1 Plan, A2.03, revision C	24 April 2019	Rose Architectural Design
Level 2 Plan, A2.04, revision C	24 April 2019	Rose Architectural Design
Level 3 Plan, A2.05, revision C	24 April 2019	Rose Architectural Design
Level 2 Plan, A2.06, revision C	24 April 2019	Rose Architectural Design
Level 5 Plan, A2.07, revision C	24 April 2019	Rose Architectural Design
Roof Plan, A2.08, revision C	24 April 2019	Rose Architectural Design

Architectural Plans – Endorsed with Council’s stamp		
Drawing No.	Dated	Prepared By
Section A-A & B-B, A3.05, revision B	20 February 2019	Rose Architectural Design
Section C-C & D-Dm A3.06, revision B	20 February 2019	Rose Architectural Design
Landscape Plans – Endorsed with Council’s stamp		
Concept Masterplan (p.13), revision E	April 2019	Context Landscape Design
Southern & Eastern Bushland Zone (p.14), revision E	April 2019	Context Landscape Design
Fisher Road Frontage (p.15), revision E	April 2019	Context Landscape Design
Northern Bushland Zone (p.16), revision E	April 2019	Context Landscape Design
Community Parkland (P.17), revision E	April 2019	Context Landscape Design
Heritage Zone (p.18), revision E	April 2019	Context Landscape Design
Rooftop Garden (p.19), revision E	April 2019	Context Landscape Design
Plating Schedule (p.21-22), revision E	April 2019	Context Landscape Design

(b) The following Approved Supporting Documents are relied upon in this consent:

Reports/ Documentation:		
Report	Dated	Prepared By
Flora and Fauna Report	April 2018	Ecological Consultants Australia Pty Ltd
Geotechnical Study	29 June 2011	Coffey Services Australia Pty Ltd
Geotechnical Addendum Letter	13 March 2018	Coffey Services Australia Pty Ltd
Geotechnical Investigation Report	28 April 2020	Coffey Services Australia Pty Ltd
Aboricultural Impact Assessment Report	August 2018 December 2020	Bluegum Tree Care Consultancy
Parking and Traffic Report (ref:JH/10845/jj)	2 March 2020 7 December 2020	Colson Budd Rogers & Kafes Pty Ltd
Colours and Materials Letter	28 February 2020	Placemakers Architects Urban Planners

A. Add Condition No.1A – Modification of Consent – Approved Plans and supporting documentation to read as follows:

a) Modification Approved Plans.

Architectural Plans – Endorsed with Council’s stamp		
Drawing No.	Dated	Prepared By
A0.00(E) Cover Page	01.28.2021	Giles Tribe Pty Ltd
A1.05(E) – Landscape Calculation Plan	01.28.2021	Giles Tribe Pty Ltd
A2.01 (D F) – Basement Parking Plan 1 (Basement 2)	06/02/2020 01.28.2021	Rose Architectural Design Giles Tribe Pty Ltd
A2.02 (D F) – Basement Parking Plan 2 (Basement 1)	06/02/2020 01.28.2021	Rose Architectural Design Giles Tribe Pty Ltd
A2.03 (E) Level 1 Plan	01.28.2021	Giles Tribe Pty Ltd
A2.04 (E) Level 2 Plan	01.28.2021	Giles Tribe Pty Ltd
A2.05 (E) Level 3 Plan	01.28.2021	Giles Tribe Pty Ltd
A2.06 (D) Level 4 Plan	01.28.2021	Giles Tribe Pty Ltd
A2.07 (D) Level 5 Plan	01.28.2021	Giles Tribe Pty Ltd
A2.07A (B) Level 6 Plan	01.28.2021	Giles Tribe Pty Ltd
A2.08 (E) Roof Plan	01.28.2021	Giles Tribe Pty Ltd
A3.02 (E) West & South Elevation (No Trees)	01.28.2021	Giles Tribe Pty Ltd
A3.04 (E) East & West Elevation (No Trees)	01.28.2021	Giles Tribe Pty Ltd
A3.05 (D) Section A-A & B-B	01.28.2021	Giles Tribe Pty Ltd
A3.06 (D) Section C-C & D-D	01.28.2021	Giles Tribe Pty Ltd
A3.07 (E) Height Plane Diagram	01.28.2021	Giles Tribe Pty Ltd
A3.08 (A) Height Exceedance Diagram	01.28.2021	Giles Tribe Pty Ltd
A4.01 (E) Shadow Diagrams – June 21	01.28.2021	Giles Tribe Pty Ltd
A4.01A (A) Shadow Diagrams – June 21	01.28.2021	Giles Tribe Pty Ltd
A4.02 (E) Shadow Diagrams – December 21	01.28.2021	Giles Tribe Pty Ltd
A4.03 (E) Shadow Diagrams – March/Sept 21	01.28.2021	Giles Tribe Pty Ltd
A4.10 (B) Sun's Eye Diagrams_01	01.28.2021	Giles Tribe Pty Ltd
A4.11 (B) Sun's Eye Diagrams_02	01.28.2021	Giles Tribe Pty Ltd
A5.01 (C E) – External Materials & Finishes Palette	27/02/2020 01.28.2021	Rose Architectural Design Giles Tribe Pty Ltd
A6.01 (B) GFA Diagram	01.28.2021	Giles Tribe Pty Ltd
A6.03 (B) Building A Elevations	01.28.2021	Giles Tribe Pty Ltd
A6.04 (B) Building B Elevations	01.28.2021	Giles Tribe Pty Ltd
A6.05 (B) Building C Elevations	01.28.2021	Giles Tribe Pty Ltd
A7.01 (B) Cross Ventilation Diagram	01.28.2021	Giles Tribe Pty Ltd

Architectural Plans – Endorsed with Council’s stamp		
Drawing No.	Dated	Prepared By
A8.01(B) Apartment Schedule	01.28.2021	Giles Tribe Pty Ltd

Reports / Documentation - All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate 944202M-02 3	27 February 2020 3 February 2021	Rose Management Services Pty Ltd

22. Amendments to Approved Plans

All landscaping works are to be consistent with the Approved Architectural Plans referenced in Condition 1 of this consent.

Prior to the issuance of the construction certificate, the Approved Architectural Plans referenced in Condition 1 and 1A of this consent are to be amended, as follows:

- ~~(a) The deletion of the residential common room, to be replaced with a sub floor area that is setback 1m from the alignment of the balcony above.~~
- ~~(b) The deletion of the paved area adjacent to the common room, with the retention of natural ground levels in this area.~~
- ~~(c) An adjustment to the setback of the south eastern corner of the balcony associated with Apartments C.G01, such that no part of the structure is within 4m of the eastern property boundary, whilst ensuring the retention of the proposed planter boxes.~~
- ~~(d) An adjustment to the setback of the south eastern corner of the balcony and courtyard associated with Apartments C.101, such that no part of the structure is within 6m of the eastern property boundary, whilst ensuring the retention of the proposed planter boxes.~~
- ~~(e) The incorporation of 1.7m high privacy screens to separate the courtyards/balconies adjacent to:

 - i. Apartments C.G01 and C.G02
 - ii. Apartments C.101 and C.102
 - iii. Apartments C.401 and C.402
 - iv. Apartments~~
- ~~(f) The incorporation of a 1.7m high privacy screen on the eastern elevation of the balcony associated with Apartment C.204.~~
- ~~(g) The deletion of the balconies associated with:

 - i. Bedroom 1 in Apartment C.110
 - ii. Bedroom 2 in Apartment C.112
 - iii. Bedroom 2 in Apartment B.101
 - iv. Bedroom 2 in Apartment B.106~~

~~With the sliding doors to be replaced with windows of the same size and design as the respective windows on the level above.~~

~~(h) The incorporation of a light weight roof above the two letter box areas.~~

~~(i) The incorporation of a garage door at the entrance of the garage, setback 1m from the façade of the parapet above, that automatically opens as vehicles approach from both inside and outside the development between 7am and 9pm, and when the commercial tenancy is open for trading.~~

23. Amendments to Approved Landscape Plans

All landscaping works are to be consistent with the Approved Landscape Plans referenced in Condition 1 of this consent.

Prior to the issuance of the construction certificate, the Approved Landscape Plans referenced in Condition 1 of this consent are to be amended, as follows:

~~(a) To ensure consistency with the amended Approved Architectural Plans,~~

~~(b) The passive hardscape area and bench seating above the garage entrance, between Apartments B.106 and A.G16, is to be removed and replaced with a planting area with a minimum soil depth of 1m, to accommodate 3 x small canopy trees. Further, soft plantings are to be incorporated along the western parapet to drape down over the garage entrance.~~

~~(c) The retaining wall to the north of the main driveway/garage entrance is to step up in height from 34.80 at the street frontage to 36.0 to allow for the land to be battered up away from the street to screen the subfloor wall below Apartment A.G16.~~

~~(d) The retaining wall surrounding the planter fronting Fisher Road, adjacent to Apartment B.106 is to be increased in height from 34.80 to 36.00.~~

~~(e) The incorporation of Southern /Eastern Bushland Planting in the area between the subfloor area below Apartments C.G01 and C.G02 and the eastern property boundary, with the retention of natural ground levels.~~

88. Parking

All parking spaces are to be maintained free of obstruction and used solely for the parking of vehicles. The development is to maintain the following spaces for the life of the development:

(a) ~~185~~ **215** dedicated car spaces for the ~~126~~ **147** residential apartments, with at least 1 space for each one and two bedroom apartments and 2 spaces for each three bedroom apartments,

(b) 12 dedicated spaces for Pacific Lodge, clearly marked "commercial",

(c) ~~26~~ **30** dedicated visitor parking spaces, clearly marked "visitor", including 1 parking space for people with disabilities compliant with the provisions of AS2890.6, and

(d) 2 x dedicated spaces for small delivery vehicles, clearly marked "deliveries"

The 12 dedicated spaces for Pacific Lodge and the 2 dedicated delivery spaces must be accessible at all times and must not be located behind the 'residential carpark control door'.

4 Planning Assessment

Mecone has undertaken an assessment of the proposed modified proposal against the relevant planning and environmental legislation and guidelines to identify potential environmental impacts and mitigation measures. Potential environmental impacts and their mitigation measures are discussed below.

4.1 Section 4.55(2) of EP&A Act 1979

The EP&A Act is the key environmental planning legislation in New South Wales. It establishes the regime in which consent authorities consider potential environmental effects of proposed developments. This includes the ability to modify development approval through Section 4.55 of the Act.

Section 4.55(2) of the EP&A Act, states:

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

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with—*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

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

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

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

This SEE includes an assessment of the proposed modifications against the matters for consideration listed under Section 4.15 of the EP&A Act and should be read in conjunction with information annexed to this report.

4.1.1 Substantially the same development

It is considered that the overall proposed development is substantially the same as the original Approved Development (DA/2018/1574). The modification primarily seeks internal reconfigurations, adjustment to levels and construction of an additional level on Buildings A, B and C to accommodate an additional 21 residential apartments as well as some modest excavation to accommodate additional parking spaces within the basement levels.

The proposal will not seek to alter the use approved on site. The majority of the built form (notwithstanding the additional height proposed) will remain substantially the same as approved with only minor modifications included in order to satisfy Conditions 22 and 23 of the Conditions of Consent.

Additional Apartments and Height

The works seek modest internal reconfigurations, adjustment to levels and an increase in height to the top of buildings A, B and C to integrate the additional apartments within the maximum permissible FSR under the WLEP2011 of 1.45:1 (GFA of 15,399m²). Much of the exceedance, as demonstrated in **Figures 6 to 9**, is isolated to the roof structure with the majority of the modifications and additional residential GFA located below the height control. Although Section 4.55 modifications do not technically require a Clause 4.6 variation request as a precondition of approval, the modification is supported by a merits assessment against the key principles of Clause 4.6 of the WLEP2011 in **Appendix 12**.

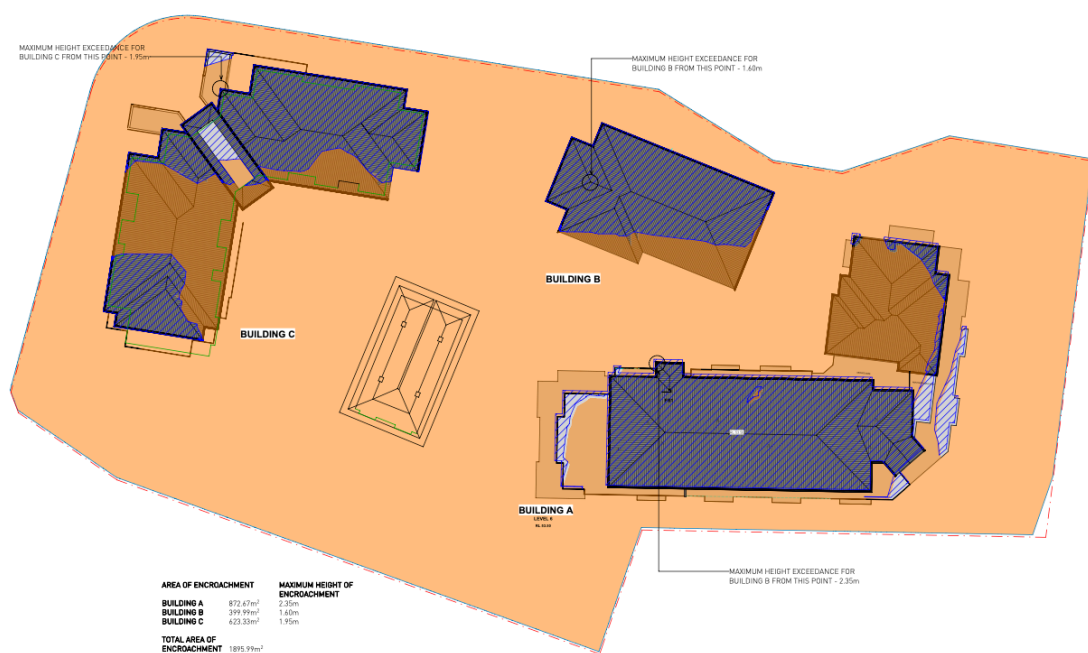


Figure 6. Height Exceedance Diagram (extract from A 3.18 Rev A)
 Source: Giles Tribe

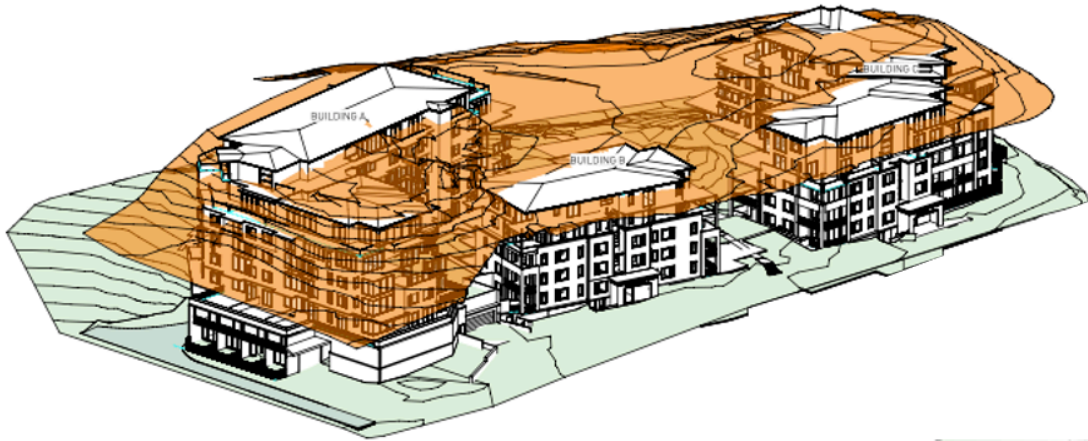


Figure 7. 13m Height Plane Diagram - North West Elevation (extract from A 3.07 Rev E)
 Source: Giles Tribe

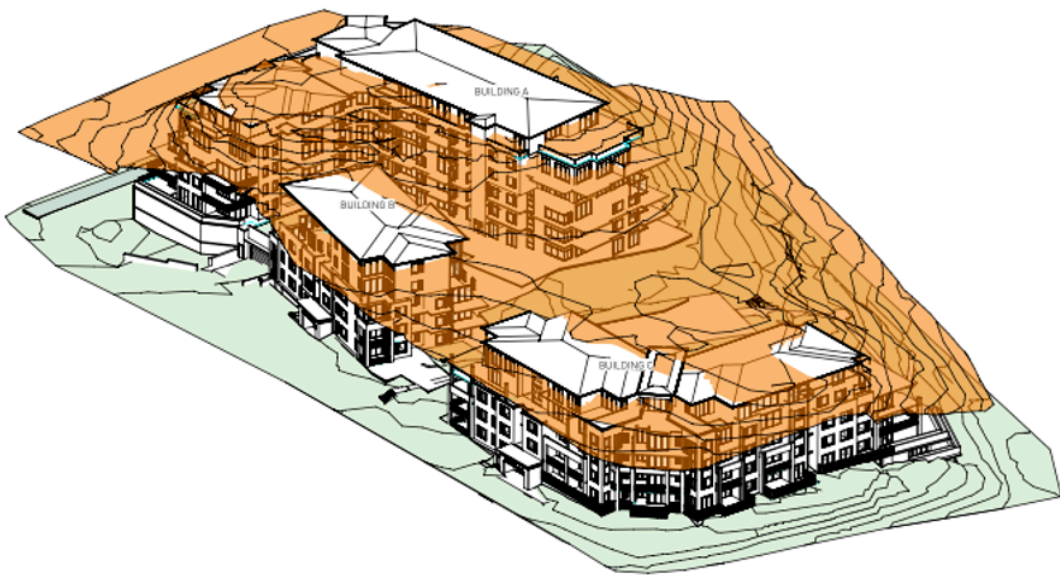


Figure 8. 13m Height Plane Diagram - South West Elevation (extract from A 3.07 Rev E)
 Source: Giles Tribe

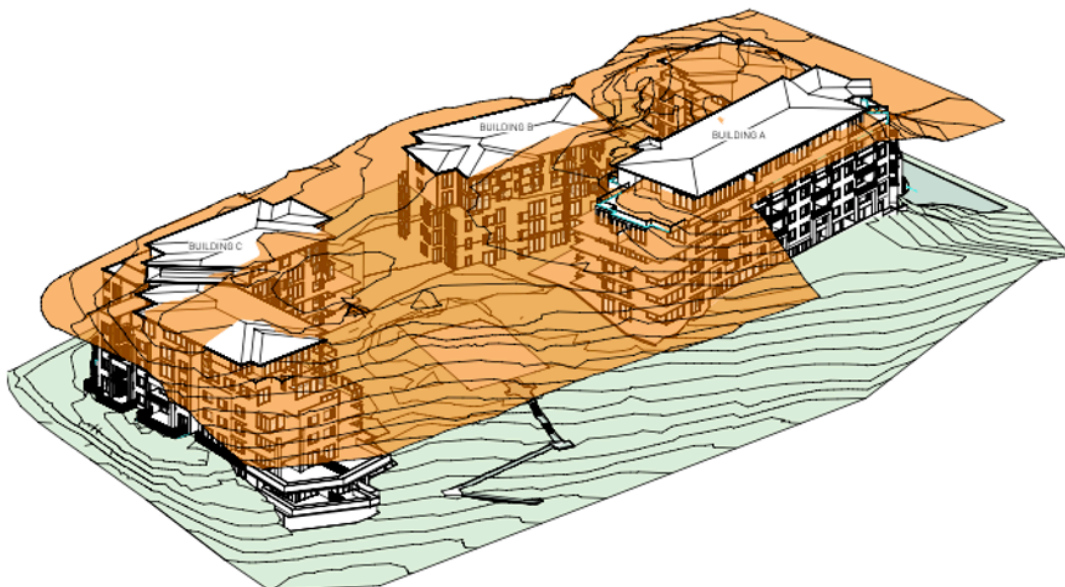


Figure 9. Height Plane Diagram - South East Elevation (extract from A 3.07 Rev E)
 Source: Giles Tribe

Despite this increase, the overall modified built form remains substantially the same as approved. The development continues to comprise three (3) apartment blocks set around the central heritage item (Pacific Lodge). Setbacks at the lower levels have been maintained, and the proposed additional excavation will be located below ground and not visible from the public domain.

The proposed modest increase in height will not alter the use approved on site and will maintain a floor space ratio control compliant with the WLEP2011. *Giles Tribe* have undertaken extensive work to ensure the additional height has been stylistically integrated into the existing form with substantial setbacks and incorporation of patios.

Further, internal level adjustments have been undertaken to reduce the extent of exceedance from the height control, which results in the majority of the upper level being contained within the maximum height limit limiting the exceedance to largely only the roof forms in some locations, largely as a result of the rigid nature of the development over an undulating natural topography. The proposed upper levels have been carefully designed to integrate into the design seamlessly and will be constructed of materials and finishes approved for the remainder of the building.

The remaining lower levels propose minor amendments to satisfy Conditions 22 and 23 of the Conditions of consent; however, otherwise remain largely unchanged by the modification.

Enlargement of the basement levels and increase to quantity of parking spaces

This subject modification seeks some additional excavation to include an additional 34 residential parking spaces within the basement levels in response to the additional 21 residential apartments proposed (refer to **Table 3**).

The integration of these parking spaces will largely be contained within the existing footprint, with internal reconfigurations and some additional excavation required. The design will utilise tandem parking spaces to minimise the extent of this excavation. The proposed modifications, which seek to improve parking on site, will result in no change to the vehicular access points or servicing from the approved consent, will not alter the commercial or delivery allocated rates or spaces and does not seek excavation below the heritage item. An amendment to Clause 88 is however required, to reflect the proposed additional excavation and modest reconfiguration of Basement Levels 1 and 2.

The additional basement parking spaces will remain consistent with the condition in that all parking spaces will be maintained free of obstruction and will ensure off-street parking is maintained for the life of the development and used solely for the parking of vehicles.

The original *Sydney North Planning Panel Assessment Report*, dated 4 June 2019, established that in accordance with the car parking requirements of the WDCP2011, the development generates demand for 189 car parking spaces. The original DA approved 191 car spaces which was deemed consistent with the minimum requirements of the WDCP2011. MOD2020/0097 permitted 225 parking spaces for 126 residential apartments with vehicular access from Fisher Road.

The proposed increase of 34 car spaces, resulting in a total of 259 spaces, will continue to maintain compliance with the WDCP2011's minimal parking requirements (refer to Section 4.2.3 of the SEE for detailed discussion).

The proposal provides a more comfortable rate of carparking for residents of the dwelling, in response to the integration of an additional 21 apartments. The additional parking is proposed so that each three-bedroom apartment, plus a number of the two-bedroom apartments, are provided with a minimum of two parking spaces. The proposed commercial and delivery parking spaces will also remain unchanged.

This modification is supported by the updated Architectural Plans in **Appendix 1** and a Traffic Statement prepared by *Colston Budd Rogers & Kafes Pty Ltd* attached in **Appendix 11**.

Table 3. Overview of approved and proposed quantity of parking spaces				
Control WDCP2011	Approved quantity of rooms under DA/2018/1574	Proposed quantity of rooms	Approved under DA/2018/1574	Proposed Parking
One space per one-bedroom apartment	35	38	151	180+35 (incl 19 tandem and 16 surplus)
1.2 space per two-bedroom apartment	70	79		
1.5 spaces per three-bedroom apartment	21	30		
TOTAL	126	147		
1 space per five apartments for visitors			26	29 +1 DDA
1 space per 40m ² business premises (excluding customer service areas), plus 1 space per 16.4m ² for customer service area.	320m ²	320m ²	12 commercial +2 delivery pacific lodge	12+2
TOTAL			225	259

Satisfaction of Conditions 22 and 23

The proposed modified architectural plans have been updated to satisfy the conditions stipulated in Condition 22 and 23 of the Conditions of consent. A schedule of consistency is provided in **Appendix 3** and **Appendix 4** of the SEE.

Overall, the modifications will maintain '*substantially the same development*' as approved and will not introduce any significant additional environmental impacts to that approved under the development consent. The modification does not significantly alter the development's consistency with the key planning controls and includes no change of use on site. Therefore, it is considered that the proposed modification is eligible for Council's consent under Section 4.55(2) of the Act.

4.1.2 Notification

The proposed modification may be exhibited in accordance with Council's policies.

4.1.3 Consideration of any submissions

The proposed modification will include consideration of any submissions in accordance with Council's policies.

In addition, in accordance with Section 4.55(3) of the EP&A Act, the subject SEE has considered relevant matters from Section 4.15(1) of the EP&A Act (refer to Section 6 of the SEE).

4.2 State Environmental Planning Policies

4.2.1 State Environmental Planning Policy (BASIX) 2004

The original Development Application (DA/2018/1574) included a BASIX Certificate which established that the original proposed development was able to comply with the required targets. The application was also supported by NatHERS Certificates. Conditions have been included in the Conditions of Consent to require compliance with the commitments indicated in the BASIX Certificate.

An amended BASIX Certificate has been provided which addresses the proposed modifications and confirms that the development remains capable of complying with the approved BASIX targets. The updated BASIX Certificate is attached in **Appendix 6**.

4.2.2 State Environmental Planning Policy No. 55 (Remediation of Land)

Clause 7(1)(a) of SEPP 55 requires that the consent authority to consider whether land is contaminated. The original Development Application DA/2018/1574 was supported by a *Preliminary Environmental Site Assessment (PSI)* prepared by *Coffey Services Australia Pty Ltd (Coffey)* (**Appendix 9**). The original *Sydney North Planning Panel Assessment Report* notated that the site has been zoned for residential purposes for a significant period of time with no prior land uses and is considered that the site poses no risk of contamination with no further consideration under Clause 7 (1)(b) and (c) of SEPP 55 required with the land considered to be suitable for the residential land use. The proposed modifications will maintain compliance and consistency with SEPP55.

4.2.3 State Environmental Planning Policy (Infrastructure) 2007

The original Development Application (DA/2018/1574) included an assessment against the *State Environmental Planning Policy (Infrastructure) 2007* (SEPP Infrastructure). Clause 45 of SEPP Infrastructure requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out;

- Within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists),
- Immediately adjacent to an electricity substation,
- Within 5m of an overhead power line
- Includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and /or within 5m of an overhead electricity power line.

The Original DA was referred to Ausgrid. No response was received within the designated 21-day statutory period and therefore, it was assumed that no objections were raised, and no conditions were recommended. This proposed modification not

involve works that would trigger referral to Ausgrid. The internal reconfiguration of parking will be undertaken within the existing basement footprint.

4.2.4 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Buildings

The Original Development Application (DA/2018/1574) addressed the proposed development against the provisions of the *State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development* (SEPP65) including the nine (9) design principles stipulated in the *Apartment Design Guide* (ADG) that need to be considered in achieving good design.

A Compliance Assessment has been prepared by *Giles Tribe Pty Ltd* and attached in **Appendix 5**. Overall, the development:

- Maintains compatibility with that of other developments in the B4 Mixed Use zone, and is considered with other nearby and adjacent residential flat buildings;
- Achieves an appropriate balance between the retention of these natural features and heritage items and the development of the site, with key areas and bands retained and enhanced to soften the visual impact of the proposal and to assist in providing an appropriate transition the development in the vicinity;
- Maintains consistency with the size/scale of other residential flat buildings along Fisher Road and nearby mixed-use developments within the commercial centre;
- Is an appropriate contextual fit for the site, with a density that is compliant with the FSR control and suitable within the B4 Mixed Use Zone and for a site in such close proximity to the Dee Why Town Centre and the main transport links on Pittwater Road;
- Maintains the landscaped solution approved under the Original DA which comprises an appropriate scale of plantings to ensure that the visual impact of the built form will be screened and softened as seen from the public domain and adjoining properties;
- Provides a compliant level of amenity for future occupants of the development, without unreasonably compromising the amenity of adjoining residences;
- Provides an appropriate balance of different housing options for a variety of living needs and household budgets. The application will provide a total of 38 x 1 bed, 79 x 2 bed and 30 x 3 bed apartments on site. The additional 21 apartments proposed under this modification will provide additional housing options for the local community;
- Incorporates varied colours and materials, which change as the height of the development increases to break down the scale of the façade, consistent with the most recent conditions of consent; and
- The proposed additional excavation between Building C and B will result in a minor encroachment into deep soil areas and towards some existing established trees on site. These two trees proposed to be removed as a result of the additional excavation works are not classified as of high retention value. Despite this, the modification maintains compliant deep soil zones (27.3% or 2,899m²), communal open space (44.3% or 4,702m²), apartment size and balcony dimensions;
- All other trees on site will remain as approved under the original DA. Further, to ensure that the works do not impact the tree protection or root zones of any trees in the vicinity of the works, an *Arboricultural Report* has been prepared and attached in **Appendix 8**.

- Maintains compliant natural ventilation rates (90 of 147 or 61.2%) of apartments and daylight access (105 of 147 apartments or 71%) receiving minimum of 2hrs solar access to living rooms in mid-winter; and
- Maintains consistency with the relevant parts of the ADG outlined in detail in **Appendix 5**. Where a variation occurs, justification is notated.

4.3 Warringah Local Environmental Plan 2011

The development has been addressed under the provisions of the environmental planning instrument in the original DA, which includes the *Warringah Development Control Plan 2011* (WDCP2011). The key proposed modifications result in an increase to the quantity of residential apartments, increase to the height of the development and increase to the quantity of parking within the basement levels and minor administrative amendments to the conditions of consent. These proposed works remain compliant with the WLEP2011 controls as discussed below;

Zoning and permissibility

The subject lot is zoned B4 Mixed Use under the WLEP2011. The land use table permits 'residential flat buildings' and 'commercial premises' with consent. The proposed works do not seek to change the use approved on site.

Height and Floor Space Ratio

A maximum height control of 13m applies to the subject site under the WLEP2011. The conditions of consent approved a height of 15.9m (RL+54.58m) with the support of a Clause 4.6 Variation to Development Standard Report under the Original DA. The proposed modifications seek internal reconfigurations, adjustment to levels and construction of an additional level on Building A, B and C to accommodate an additional 21 residential apartments. These works result in a maximum height of RL+57.38m (ridge of Building A), resulting in a maximum 2.35m over the 13m height control (16.6% variation). Building B and C exceed the height control (at their maximum ridge line) by 1.60m to 1.95m.

The maximum permissible FSR on site is 1.45:1 (15,399m²) under the WLEP2011. DA2018/1574 approved a maximum FSR of 1.26:1 (13,400m²). The proposed modification seeks an additional GFA of 1,790m² and results in a total overall FSR of 1.43:1 (15,190m²), better realizing the control's maximum allowance under the WLEP2011.

These works will result in minimal and manageable impacts compared to the existing approved on site with the proposed modifications maintaining a compliant FSR and ensuring the majority of the proposed additional bulk remains located largely below the maximum permissible building height, with exceedance predominantly limited to the roof form structure.

The addition has been carefully designed in response to the existing form approved and underlying topography of the site. The modifications ensure that the development remains contextually appropriate, particularly given the varied urban morphology of the precinct, and will maintain significant boundary setbacks and building separation that will not encroach onto the heritage item known as Pacific Lodge. The envelope continues to demonstrate that the development can result in an appropriate relationship between the building and surrounding heritage items.

Furthermore, the addition incorporates patio setbacks on the parameter of the building to minimise views of the addition from the public domain, minimise bulk, overshadowing and privacy impacts. Internal level adjustments have been undertaken to reduce the extent of exceedance from the height control, which results in the majority of the upper level being contained within the maximum height limit

with only the roof form exceeding the control in some locations. The proposed upper levels have been carefully designed to integrate into the design seamlessly and will be constructed of materials and finishes approved for the remainder of the building.

The high degree of articulation and varying topography permits view corridors between built forms structures and minimises any resultant additional view impacts from the scheme originally approved. It should also be noted that much of the development will be screened from the public domain as a result of the topography of the site and established vegetation and structures on site and in the surrounds.

The subject application is a modification under Section 4.55 of the Act and therefore no Clause 4.6 variation request is required. For completeness, a merits test of the proposal against the key principles in Clause 4.6 (**Appendix 12**) has been undertaken to demonstrate that, notwithstanding the non-compliance, the proposal meets the merits tests and therefore the DA may be approved as proposed.

Heritage Items and Conservation Areas

The subject site is identified as a heritage item of local significance under the LEP (Item 43 of Schedule 5) known as '*Pacific Lodge (Salvation Army)*'. Furthermore, surrounding development such as the Dee Why Public Library, Civic Centre and civic centre landscaping to the east are considered heritage items of state significance. These items of heritage significance were addressed under the original DA and accompanied by a Heritage impact Statement (HIS) and Conservation Management Plan for the Pacific Lodge. The modifications do not seek to change or impact the heritage items on site or in the vicinity and as such, the proposed development will not contravene any heritage planning controls under the WLEP2011.

Non-residential uses at ground floor

The *Sydney North Planning Panel* approved under the Original DA a variation from Clause 6.7 with the sanction for the dwellings being permitted at the ground level of each residential flat building with the support of a Clause 4.6 Variation to Development Standard Report under the Original DA. The proposed modification does not seek to change the use or location of residential dwellings as approved under the Original DA and therefore maintains consistency with the controls approved under the Conditions of Consent.

Dee Why Town Centre

Consistent with the objectives of Part 7 of the WLEP2011 for development within the Dee Why Town Centre, the proposed development continues to create an attractive living environment that sustains the social, economic and environmental needs of its community and visitors, whilst achieving a pattern of development that reflects the underlying urban form in Dee Why and attains high levels of visual and physical permeability. It also ensures that the development responds to the surrounding environmental and protects the scenic qualities of Dee Why and its views and vistas, whilst maintaining a high standard of architectural design, materials and detailing appropriate to the building type and location and ensures the form and external appearance of the development improves the quality and amenity of the public domain.

4.4 Warringah Development Control Plan 2011

The development has been addressed under the provisions of the environmental planning instrument under the original DA, which includes the *Warringah Development Control Plan 2011* (WDCP2011). The proposed modifications do not seek

to change the use from what was previously approved under the original DA. Some of the key controls are discussed below;

Desired Character of the Dee Why Mixed-Use Area

The subject site is located within the Dee Why Mixed-Use Area – Area 10 Civic Centre. The modifications seek internal reconfigurations, adjustment to levels and construction of an additional level on Buildings A, B and C to accommodate an additional 21 residential apartments. This modification will largely maintain a built form similar in scale to that approved under the original DA and will continue to be a quality architecturally designed development with form, scale and finish that respects the heritage fabric of the locality and is compatible with the streetscape of the Dee Why Town Centre.

The development maintains the objectives of the DCP by encouraging good design and innovative architecture, ensuring the creation of a pedestrian environment that is comfortable, interesting and safe, ensures that shops and dwelling enjoy good access to natural light and buildings that address the street and retains vegetation and sandstone outcrops as approved under the original DA. Overall, the proposed modifications are considered to maintain consistency with the requirements, purpose and desired environment expressed in the WDCP2011.

Views

Clause D7 of the WDCP2011 outlines the objectives and provisions relating to views. The modified built form will extend above the tree canopy and the height control by 2.35m. The proposed impact compared to the approved is minor with views from McIntosh Road limited to only a portion of views with the degree of impact reduced as you move up the slope. The integration of appropriate setbacks and building separations, enable view corridors through the site and breaks up the building masses. The design remains consistent with the objectives of the WDCP2011, through the continuation of reasonable sharing of views, maintaining innovative design solution to improve the urban environment, and ensuring that the existing canopy trees have priority over views.

Retaining unique environmental features

The proposed modifications will not impact the existing approach to retaining unique environmental features. The modifications do not seek changes that affect the retention of any unique features on site such as rockery. The application does seek to remove two (2) trees (Nos. 58A and 61A) to allow the enlargement of the basement levels. An *Arboricultural Report* has been prepared by *Bluegum Tree Care and Consultancy* which concludes that tree 58A and 61A are not classified of high value retention. Investigation has been undertaken to determine the feasibility for the retention of these two trees during the proposed works. The *Arboricultural Report* established the additional excavation would encroach the Structural Root Zone of these two trees, resulting in potential major root loss and accordingly it is unlikely for these two trees to be able to tolerate the impact. As such, it is proposed to remove these trees to accommodate the works. All other trees will be retained on site as approved under the original DA. The location of the additional excavation has been carefully chosen to minimise the extent of works and prevent impacts to the tree protection zones of high retention value trees. Consistent with Clause E1 and E6 of the DCP, the development maintains a landscaped contribution to the street and compliance and consistency with the DCP requirements as approved under DA/2018/1574.

Access, car parking and car parking facilities

Clause C2 and C3 of the WDCP2011 outlines the objectives and provisions relating to Car Parking requirements and parking facilities. Appendix 1 of Clause C3 establishes the following minimum parking rates required for the subject development:

- 1 space per one (1) bedroom apartment;
- 1.2 spaces per two (2) bedroom apartment;
- 1.5 spaces per three (3) bedroom apartment;
- 1 space per five (5) apartments for visitors; and
- 1 space per 40m² business premises (excluding customer service areas), plus one space per 16.4m² for customer service area.

The original *Sydney North Planning Panel Assessment Report*, dated 4 June 2019, established that in accordance with the car parking requirements of the WDCP2011, the development generates demand for 189 car parking spaces. The original DA approved 191 car spaces which was deemed consistent with the minimum requirements of the WDCP2011. MOD2020/0097 permitted 225 parking spaces for 126 residential apartments with vehicular access from Fisher Road.

The proposed modifications seek a minor amendment to Clause 88 to permit the reconfiguration of Basement Level 1 and 2 to accommodate an additional 34 residential car parking spaces, resulting in an amended total of 259 parking spaces.

The proposed additional 34 parking spaces is in response to the increase to residential apartment numbers with much of the additional spaces integrated within the existing building footprint via reconfigurations of the internal layout and utilisation of a tandem parking system. Where tandem parking is proposed to assist accommodating the additional vehicles, these will be allocated to persons of the same residence to ensure ease of consistent access, management and manoeuvring within the basement. However, it is noted that some additional excavation is required. A *Geotechnical Investigation Report* in **Appendix 10**.

This increase in residential parking spaces maintains compliance with the minimum parking rates required under the WDCP2012 and ensures ongoing consistency with the objectives of the respective controls with the development in that the development:

- Maintains the provision of off-street car parking on site, located underground in basement levels to ensure the parking facility will have minimal visual impact on the street frontage when viewed from the public domain;
- Continues to avoid the use of mechanical car stacking spaces;
- Provides safe and convenient pedestrian and traffic movement. Where tandem parking is proposed to assist accommodating the additional vehicles, these will be allocated to persons of the same residence to ensure ease of consistent access, management and maneuvering within the basement.

Overall, these proposed basement modifications are contained below ground level and therefore continues to preserve the amenity, built form and maintains the natural topography of the site as presented from the street. Moreover, the proposed increase of 34 car spaces, resulting in a total of 259, will continue to maintain consistency and compliance with the WDCP2011's minimal parking requirements and will not alter the approved commercial and delivery parking space, access or servicing arrangements.

Refer to the updated Architectural Plans in *Error! Reference source not found.* and a Traffic Statement prepared by *Colston Budd Rogers & Kafes Pty Ltd* attached in **Appendix 11Appendix 1**.

Access and Servicing and Internal Layout

The proposed modifications will maintain compliance and consistency with the objectives of Clause D20 'Safety and Security' of the WDCP2011 with the development and proposed retention of vehicular and pedestrian access locations on site.

Privacy

Clause D8 of the WDCP2011 relates to privacy controls. The proposed additional height and 21 additional residential apartments will not generate significant privacy impacts over those approved. The proposed additional residential apartments on Levels are setback from the building edge and will be minimally visible from ground level. The development is still able to comply with the objectives by:

- Ensuring the siting and design of buildings will provide a high level of visual and acoustic privacy for occupants and neighbours;
- Encouraging innovative design solutions including carefully landscaping to act as natural screening methods whilst improving the urban environment;
- Maintaining natural ventilation and solar access which would otherwise be impacted if a solid balustrade was to be installed as per the Conditions of Consent.

5 Environmental Assessment

In accordance with Section 4.15 of the EP&A Act, an assessment has been undertaken for the potential environmental impacts associated with the development in the original DA. The proposed modification does not create any additional significant environmental impacts other than those already assessed and approved under the original development application DA/2018/1574 and subsequent modification D/2020/0097).

Mecone has worked closely with *Giles Tribe Pty Ltd* and other related consultants to ensure the proposed modifications will enable efficient development of the site, without causing any additional environmental impacts. An assessment against Section 4.15 of the Act has been undertaken to demonstrate the minor nature of the proposed modification. **Table 4** provides a summary of the assessment.

Table 4. Section 4.15 Assessment Summary

	Matter for consideration – General	
(1)	In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:	
(a)(i)	The provision of: Any environmental planning instrument, and	The proposed modification has been shown to continue to be consistent with the relevant SEPPs and LEP as approved under the original DA. Refer to Section 4 of the SEE.
(ii)	Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and	Not Applicable
(iii)	Any development control plan, and	The proposed application has been assessed against the relevant provisions of the <i>Warringah Development Control Plan 2011</i> . Refer to Section 4.4 of the SEE.
(iiia)	Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and	Not Applicable
(iv)	The regulations (to the extent that they prescribe matters for the purposes of this paragraph),	The proposal remains consistent with the regulations applying to this development application.
(b)	The likely impacts of that development, including environmental impacts on both the natural and	The proposed modifications are modest in nature and will have

Table 4. Section 4.15 Assessment Summary

	built environments, and social and economic impacts in the locality,	minimal and manageable environmental impacts. All conditions will still need to be met.
(c)	The suitability of the site for the development,	The site has been demonstrated as being suitable for the development, and this modification has no effect on the site's suitability.
(d)	Any submissions made in accordance with this Act or regulations,	The proposed modification will include consideration of any submissions in accordance with Council's policies.
(e)	The public interest.	The proposed modification is considered to be in the public interest as it will provide additional mix of housing mix, much needed within the community.

6 Conclusion

This SEE has been prepared on behalf of *Rose Pty Ltd (Rose Pty Ltd)* to support a Section 4.55(2) application to Council for the modification to DA/2018/1574, in relation to the site at 23 Fisher Road, Dee Why.

This SEE concludes that the proposed modifications are consistent with Section 4.15 of the *EP&A Act*. A Planning Assessment has been undertaken in **Section 4**, and an Environmental Assessment has been undertaken in **Section 5** and are supported by additional plans and statements as requested by Council.

The planning and environmental assessments found the proposal remains consistent with the state and local planning controls and that associated impacts of the proposal are considered to be minimal and manageable and that the modification results in a development that is '*substantially the same*' as the development approved. Hence;

- Consequential changes to conditions of consent will not substantially alter the approved development;
- The modification is in accordance with 4.55(2) of the Act, 'substantially the same' development as the development for which the consent was originally granted and is considered to be of minimal environmental impact;
- The proposal remains generally consistent with relevant state and local planning controls despite the modest exceedance from the LEP height control. The majority of the additional apartments remains below the maximum height control, with predominantly sections of the roof form exceeding the height control. Though a Clause 4.55 application does not require a Clause 4.6 Variation Request, for completeness, a Clause 4.6 variation Merits Test has been undertaken to demonstrate that notwithstanding the minor non-compliance with the height control, the application continues to meet the merits tests and therefore the DA may be approved as proposed in accordance with the flexibility afforded under Clause 4.6 of the WLEP 2011.
- Despite the modest exceedance with the height control under the LEP, the proposed development remains compliant with all other clauses in the LEP, including Floor Space Ratio;
- The proposed modification remains consistent with SEPP65 and the ADG, unless where otherwise justified;
- The proposed additional excavation and inclusion of additional residential parking spaces within Basement Levels will not alter the basement building footprint when viewed from the public domain and will not alter vehicular access points from the approved DA;
- The proposed building height exceedance will not result in any demonstrable detrimental impact to any sensitive land uses e.g. residential or open space, so the impact of the variation appears minimal and manageable;
- The two (2) trees proposed to be removed to accommodate the basement works *not* identified as of high retention value. The location of the additional excavation has been carefully chosen to minimise the extent of works and prevent impacts to the tree protection zones of high retention value trees;
- The proposed modifications ensure that the key social, economic and environmental matters are addressed within the design of the proposed modification in respect to amenity; and
- The proposed works are within the public interest, based on the above issues, is an appropriate outcome for the site.

- Mecone has worked closely with *Rose Pty Ltd* and other related consultants to ensure the modifications represent the most efficient and effective way forward;

Additionally, given the economic impact of Covid19 on the NSW economy, and the fact that the original approval did not realise the site's full FSR permissible, the subject proposal also will strongly contribute to the local economic and housing targets for Northern Beaches Council.

We recommend that Council approve the proposed modifications in accordance with Section 4.55(2) of the *EP&A Act*.



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