

7th February 2024

The CEO
Northern Beaches Council
PO Box 882
Mona Vale NSW 1660

Dear Sir,

**Statement of Environmental Effects
Modification of Land and Environment Court Issued Consent
Proceedings No 10083 of 2016
Boston Blyth Fleming at Northern Beaches Council
Proposed Residential Development
Lot 1, DP 5055, No. 8 Forest Road, Warriewood**

1.0 Introduction

On 3rd May 2017, the Land and Environment Court of NSW (the Court) upheld an appeal and granted deferred commencement consent to the above development involving the construction of a residential development incorporating 81 dwellings and associated civil works and landscaping. The consent has been modified on a number of occasions.

We have been engaged to prepare an application pursuant to Section 4.56 of the Environmental Planning and Assessment Act 1979 (the Act) seeking a refinement in the design of the internal road system and the provision of additional communal facilities for occupants of the development including a covered fitness area with bathroom facilities, BBQ area and swimming pool. The balance of the development remains unchanged. This application also seeks the modification of a number of conditions as detailed within this submission.

Given the minor nature of the modifications sought, Council can be satisfied that the development as modified remains substantially the same as the development originally approved.

This submission is accompanied by amended landscape plans prepared by Site Design + Studios reflecting the modified architectural detailing. These plans nominate plantings along the realigned internalised road to ensure that the development continues to sit within a landscaped setting.

The acceptability of the modified internal road arrangement is detailed in the accompanying Traffic and Parking Review, dated 15th August 2023, prepared by MLA Transport Planning and the Bushfire Threat Assessment, dated 4th August 2023 prepared by AEP. These reports conclude that the modified road arrangement is acceptable and will in fact improve access and fire fighting abilities for the subject site. This submission is also accompanied by additional updated reports including, but not limited to, geotechnical, stormwater, BCA, civil engineering plans and SEPP 65 Design Verification Report prepared by the project Architect. We also rely on the contents of the previously submitted Heritage Impact Statement prepared by Weir Phillips Heritage and Planning a copy of which has been attached.

Accordingly, the application is appropriately dealt with by way of Section 4.56 of the Act which enables Council as the consent authority to modify a Court issued consent.

2.0 Detail of Modifications Sought

Architectural Modifications

The modifications are depicted on Architectural plans A000(05), A100.1(13), A100.2(13), A350(02), A351(02), A352(02), A353(02) and A354(02) prepared by ADS Architects. The modifications can be summarised as follows:

- Upgrade of the perimeter fire access road into a sealed road and retain the approved 4 metre width.
- Modify the alignment of the central private access road by removing the road curvature with a generally straighter alignment and reduce the width to 4 metre to permit traffic flow in one direction from east to west only,
- The introduce 4 kerbside car parking spaces on the western side of the approved 8 metre wide access road for use as short term parking for deliveries and ride share/taxi drop off, and
- The provision of additional communal facilities for occupants of the development including a covered fitness area with bathroom facilities, BBQ area and swimming pool.
- Extension of Unit 50 Building D private open space.

This submission is accompanied by amended landscape plans prepared by Site Design + Studios reflecting the modified architectural detailing. These plans nominate plantings along the realigned internalised road to ensure that the development continues to sit within a landscaped setting.

The application is also accompanied by modified civil and stormwater plans prepared by WSce which nominate changes to the approved stormwater management regime including the introduction of drainage swales to replace piped drainage infrastructure.

Condition Modifications

The application seeks the modification of the following conditions:

Condition A1(a) is to be modified to reflect the modified plans and consultant reports prepared in support of this application.

Condition B20 is to be modified to read as follows:

*“Each dwelling **except one bedroom apartment 04** must have two parking spaces, dedicated on title.*

Condition B37 is to be modified to read as follows:

*“The minimum ceiling height of all habitable rooms (as defined by the Apartment Design Guidelines), including living areas, dining rooms, studies, bedrooms and kitchens, **but excluding required bulkheads**, is to be 2.7m.”*

This change is requested to provide flexibility where required bulkheads result in some areas of ceiling being less than 2.7 metres in height.

Condition B63 is to be modified as the BASIX report indicates that rainwater is to be used for irrigating **common landscaped areas only**.

Condition B66 is to be modified to read as follows:

*“The existing dwelling to be retained must ~~be connected~~ have provision for **future connection** to town water and sewer”.*

Condition C33 has been used twice and accordingly one of the conditions needs to be renumbered.

Condition E22 is to be modified to read as follows:

Condition E22 - Acoustic Review

*Prior to the issue of an Occupation Certificate, an acoustic review of the rooftop mechanical plant shall be carried out by a suitably qualified person to ensure compliance under the provisions of the Protection of the Environment Operations Act 1997. Details demonstrating compliance shall be issued to the certifier prior to the issue of ~~an~~ *the relevant* Occupation Certificate.*

Reason: To ensure adequate acoustic amenity is afforded to future occupiers”

Condition F2(k) is to be modified as the BASIX report indicates that rainwater is to be used for irrigating *common landscaped areas only*.

Condition F5(f) is to be modified as the BASIX report indicates that rainwater is to be used for irrigating *common landscaped areas only*.

3.0 Section 4.56 of the Environmental Planning and Assessment Act 1979

Section 4.56 of the Act provides that:

- (1) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if:*
 - (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
 - (b) *it has notified the application in accordance with:*
 - (i) *the regulations, if the regulations so require, and*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
 - (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
 - (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*
- (1A) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

In answering the above threshold question as to whether the proposal represents “substantially the same” development the proposal must be compared to the development for which consent was originally granted, and the applicable planning controls.

In order for Council to be satisfied that the proposal is “substantially the same” there must be a finding that the modified development is “essentially” or “materially” the same as the (currently) approved development - *Moto Projects (no. 2) Pty Ltd v North Sydney Council* [1999] 106 LGERA 298 per Bignold J.

The above reference by Bignold J to “essentially” and “materially” the same is taken from Stein J in *Vacik Pty Ltd v Penrith City Council* (unreported), Land and Environment Court NSW, 24 February 1992, where his honour said in reference to Section 102 of the Environmental Planning and Assessment Act (the predecessor to Section 96):

“Substantially when used in the Section means essentially or materially or having the same essence.”

What the abovementioned authorities confirms is that in undertaking the comparative analysis the enquiry must focus on qualitative elements (numerical aspects such as heights, setbacks etc) and the general context in which the development was approved (including relationships to neighbouring properties and aspects of development that were of importance to the consent authority when granting the original approval).

When one undertakes the above analysis in respect of the subject application it is clear that the proposed modifications maintain the previously approved built form arrangement on the site with the modifications confined to the internalised road system and communal open space facilities. The modifications do not compromise the residential amenity or environmental outcomes afforded through approval of the original application.

In this regard, the approved development remains, in its modified state, a development which will relate to its surrounds and adjoining development in the same manner as approved in terms of building form and landscaping with the approved residential amenity, design quality, drainage and environmental outcomes not altered as a consequence of the modifications sought.

The Court in the authority of *Stavrides v Canada Bay City Council* [2007] NSWLEC 248 established general principles which should be considered in determining whether a modified proposal was “substantially the same” as that originally. A number of those general principles are relevant to the subject application, namely:

- The proposed use and residential density do not change,

- The previously approved built form, landscape and drainage outcomes are not materially altered with the modifications representing a refinement in the detailing of the development as originally approved by the Court, and
- The modifications maintain or enhance the previously approved residential amenity and environmental outcomes.

On the basis of the above analysis, we regard the proposed application as being “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and is appropriately dealt with by way of Section 4.56 of the Act.

4.0 Statutory Planning Considerations

4.1 Pittwater Local Environmental Plan 2014

The Pittwater Local Environmental Plan 2014 is the principal local environmental planning instrument applicable to the land. The relevant provisions of PLEP 2014 and the manner in which they relate to the site and the proposed development are assessed below.

4.1.1 Zoning and permissibility

The developments permissibility when assessed against the provisions of PLEP 2014 is not compromised as a consequence of the modifications sought. The development will continue to be consistent with the objectives of the zone and to that extent there is no statutory impediment to the granting of the proposed modifications.

4.1.2 Height of buildings

Pursuant to clause 4.3 of PLEP 2014 the maximum building height for development on the land is 10.5 metres.

We confirm that all works sit comfortably below the prescribed building height standard.

4.1.3 Warriewood valley Release Area

Pursuant to clause 6.1 of PLEP 2014 development consent must not be granted for development on land in sector 5 unless the consent authority is satisfied that not more than 94 or less than 75 dwellings will be erected on the land. The stated objectives of the clause are as follows:

- *to permit development in the Warriewood Valley Release Area in accordance with the Warriewood Valley Strategic Review Report and the Warriewood Valley Strategic Review Addendum Report,*
- *to ensure that development in that area does not adversely impact on waterways and creek line corridors, protects existing native riparian vegetation and rehabilitates the creek line corridors,*

- *to facilitate the mitigation of odours from the Warriewood Sewage Treatment Plant on the users and occupiers of residential development in a buffer area*

This application does not seek any change to the approved dwelling density of 81 dwellings across the allotment including the retention of the existing dwelling house.

4.1.4 Acid sulfate soils

Pursuant to clause 7.1 of PLEP 2014 the site is identified as Class 5 on the Acid Sulfate Map. Having regard to the applicable considerations we have formed the considered opinion that any additional excavation proposed will not lower the watertable table on any adjoining Class 1, 2, 3 or 4 land below 1m AHD.

4.1.5 Flood planning

Clause 7.3 of PLEP 2014 applies to land at or below the flood planning level. The site is identified as being land within the Risk H3 and H5 Flood Category and subject to an Overland Flow Path – Minor. Pursuant to clause 7.3(3) (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- is compatible with the flood hazard of the land, and*
- will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- incorporates appropriate measures to manage risk to life from flood, and*
- will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

In this regard, the modifications sought do not alter the previously approved flood planning outcome for the site.

4.1.6 Biodiversity

Pursuant to clause 7.6 of PLEP 2014 the site is identified on Council's Biodiversity Map. Pursuant to clauses 7.6(3) and (4) and (3) before determining a development application for development on land to which this clause applies, the consent authority must consider:

- whether the development is likely to have:*
 - any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
 - any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*

- (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
- (iv) any adverse impact on the habitat elements providing connectivity on the land, and*
- (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Further, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact*

In this regard, the modifications sought do not alter the previously approved biodiversity outcomes for the site.

4.1.7 Geotechnical hazards

Pursuant to clause 7.7 of PLEP 2014 the south-western edge of the site is identified on Council's Geotechnical Hazard Map. In this regard, the modifications sought do not alter the previously approved geotechnical outcomes for the site..

4.2 Pittwater 21 Development Control Plan

The following sections of this statement provide a detailed assessment of the residential development against the applicable DCP provisions. The land is located within Sector 5 of the Warriewood Valley Release Area.

Locality Statement - Warriewood Valley Land Release Area

The Locality Statement for the Warriewood Valley Land Release Area is as follows:

Warriewood Valley is situated at the base of the escarpment, known as Ingleside Chase Reserve, between Mona Vale and Warriewood (see map). First identified as a Release Area in 1997, the Warriewood Valley Release Area previously consisted of 110 hectares including 32.68 hectares of industrial/commercial land and associated community facilities and infrastructure. Two recent reviews have been undertaken firstly the Warriewood Valley Strategic Review 2012 and secondly the Warriewood Valley Strategic Review Addendum Report 2014. The Release Area now includes Buffer Areas 1, 2 and 3, resulting in an area of approximately 190 hectares.

Warriewood Valley is primarily a residential area expected to provide a total of 2,451 new dwellings (this figure includes the dwellings approved under the former Part 3A legislation). When completed, it is anticipated to accommodate 6,618 residents (based on an average household occupancy of 2.7 persons per household). The Warriewood Valley Land Release Area is characterised by a mix of residential, retail, commercial, industrial, recreational, and educational land uses.

Warriewood Valley continues to be developed as a desirable urban community in accordance with the adopted planning strategy for the area, and will include a mix of low to medium density housing, industrial/commercial development and open space and community services.

The creeklines, roads and open space areas will form the backbone of the new community, complemented with innovative water management systems, the natural environment, pedestrian/cycle path network, public transport, and recreation facilities.

The Warriewood Valley Area is affected by various hazards. identified on various maps within Pittwater LEP 2014.

The Warriewood Release Area includes vegetation areas, threatened species, or areas of natural environmental significance.

A number of identified heritage items are located in Warriewood Valley.

Given the nature of the modifications sought, the consent authority can be satisfied that the development as modified will remain consistent with the desired future character statement as outlined.

Section D – Development Type Controls

| Provision | Response |
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| D16.1 Character as viewed from a public space | |
| <ul style="list-style-type: none"> ▪ Achieve the desired future character of the Locality. ▪ To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment. (En, S, Ec) ▪ To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment. The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec) ▪ High quality buildings designed and built for the natural context and any natural hazards. (En, S) ▪ Buildings do not dominate the streetscape and are at 'human scale'. Within residential and rural residential areas, buildings fronting Macpherson Street, Warriewood Road, Garden Street and Orchard Street are to give the appearance of being two storey maximum. Buildings fronting all other streets are to give the appearance of being three storey maximum. (S) ▪ To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context. ▪ To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component. Access to public places and spaces is clear and defined. (S) ▪ To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land. (En, S) <p>Controls</p> <ul style="list-style-type: none"> ▪ Buildings which front the street or creekline corridors must have a street presence and incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with any design themes for the locality. ▪ Blank street frontage facades without windows shall not be permitted. ▪ Walls without articulation shall not have a length greater than 8 metres to any street frontage. | <ul style="list-style-type: none"> ▪ The development, as modified, satisfies the desired future character of the Warriewood Valley Land Release Area Locality ▪ The development, as modified, will not alter the visual character of the development as discernible within any established streetscape. The development, as modified, will contribute positively to the proposed future streetscape. The buildings will continue to sit within a landscape setting and blend into the vegetated escarpment which forms a backdrop to the site. ▪ The development, as modified, will continue to be free from hazards as detailed with the supporting documentation and will relate appropriately to the adjacent public domain ▪ The previously approved landscape regime is modified to reflect the amended internal road and communal basement configuration although the overall landscape quality of the development is maintained. |

| Provision | Response |
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| <ul style="list-style-type: none"> ▪ Any building facade to a public place must incorporate at least two of the following design features: i. entry feature or portico; ii. awnings or other features over windows; ▪ The bulk and scale of buildings must be minimised. ▪ Garages, carports and other parking structures including hardstand areas must not be the dominant site feature when viewed from a public place. Parking structures should be located behind the front building line, preferably set back further than the primary building, and be no greater in width than 50% of the lot frontage, or 7.5 metres, whichever is the lesser. ▪ Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation. ▪ Television antennas, satellite dishes and other telecommunications equipment must be minimised and screened as far as possible from public view. ▪ General service facilities must be located underground. ▪ Attempts should be made to conceal all electrical cabling and the like. No conduit or sanitary plumbing is allowed on facades of buildings visible from a public space. ▪ Within the following Sectors and Buffer areas, development directly fronting onto Garden Street, Macpherson Street, Orchard Street, or Warriewood Road, shall appear a maximum of 2 storeys: <ul style="list-style-type: none"> ▪ Sector 101 ▪ Sector 301, 302, 303 ▪ Sector 501 ▪ Sector 801 ▪ Sector 901A, 901B, 901C, 901F, 901G ▪ Sector 10B ▪ Buffer Area 1b, 1c, 1d, 1e, 1f, 1g, 1h, 1i, 1j, 1k, 1l ▪ Buffer Area 2a ▪ Buffer Area 3b ▪ Development that does not directly front onto Garden Street, Macpherson Street, Orchard Street, or Warriewood Road in the above Sectors and Buffer Areas may appear a maximum of 3 storeys. <p>Variations – Nil</p> | |

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| D16.5 Landscaped area for individual allotments | | | |
| <p>Land to which this control applies</p> <ul style="list-style-type: none"> Land identified as being within the Warriewood Valley Land Release Area Residential Sectors P21DCPBCMDCP057 <p>Outcomes</p> <ul style="list-style-type: none"> Vegetation is retained and enhanced within the building design to screen the visual impact of the built form. Landscaped areas should be predominately areas of deep soil. Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels. To conserve significant natural features of the site and contribute to effective management of biodiversity. The area of site disturbance is minimised. Landscaping enhances and complements the natural environment and surrounding landscape character, reinstates elements of the natural environment, reduces the visual bulk and scale of development, and complements the design of the proposed development. Warriewood Valley achieves a unified and high quality landscape character that contributes to the sense of place. To ensure a reasonable level of privacy and amenity is provided within the development site and maintained to neighbouring properties. Landscaping promotes ecologically sustainable outcomes, maintaining and enhancing visual and environmental qualities, biological diversity and ecological processes. New development is blended into the streetscape and neighbourhood. A pleasant and safe living environment that is environmentally responsive. <p>Controls</p> <p>Landscaped Area</p> <p>The total landscaped area on individual residential allotments is to be in accordance with the following:</p> | | | <ul style="list-style-type: none"> The modified proposal maintains a compliant landscaped area. Such quantum ensures appropriate opportunity to achieve the outcomes of the control as detailed on the accompanying landscape plans. |
| Development | Minimum percentage (%) of site area | Minimum dimensions in metres | Response |
| <ul style="list-style-type: none"> Lots less than 9m wide | <ul style="list-style-type: none"> 25% | <ul style="list-style-type: none"> 3m | N/A |
| <ul style="list-style-type: none"> Lots 9m to 14m wide | <ul style="list-style-type: none"> 35% | <ul style="list-style-type: none"> 4m | N/A |

| Provision | | | Response |
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| <ul style="list-style-type: none"> ▪ Lots greater than or equal to 14m wide | <ul style="list-style-type: none"> ▪ 45% | <ul style="list-style-type: none"> ▪ 4m | N/A |
| <ul style="list-style-type: none"> ▪ Residential flat buildings | <ul style="list-style-type: none"> ▪ 25% | <ul style="list-style-type: none"> ▪ 3m (at ground level) | N/A |
| <ul style="list-style-type: none"> ▪ Multi dwelling housing | <ul style="list-style-type: none"> ▪ 25% | <ul style="list-style-type: none"> ▪ 3m | N/A |
| <ul style="list-style-type: none"> ▪ All other development | <ul style="list-style-type: none"> ▪ 45% | <ul style="list-style-type: none"> ▪ 5m | <p>Total across site remains 53.7%</p> <p>Complies</p> |
| <p> <ul style="list-style-type: none"> ▪ Due to the smaller lot sizes in Warriewood Valley and the resultant smaller dimensions of landscaped area, areas intended for landscaping should be predominately areas of deep soil. <p>Deep soil areas are areas of soil unimpeded by buildings or structures. Areas above the ground level cannot be counted toward deep soil area.</p> <p><u>Residential flat buildings and multi dwelling housing</u></p> <p>Basement parking should be contained within the building footprint to maximise deep soil areas.</p> <p>Where possible deep soil areas should be co-located with areas of communal open space to provide shade and amenity for residents.</p> <p><u>Land affected by Split Zoning</u></p> <p>On lots where there is a split zoning and part of the lot is zoned RE1 Public Recreation, E2 Environmental Conservation or SP2 Infrastructure, the calculation for total deep soil area will be based only on that area not zoned RE1 Public Recreation, E2 Environmental Conservation or SP2 Infrastructure, and will not be based on the site area of the whole lot.</p> <p><u>Landscaping Requirements</u></p> <p>Landscaping is to be provided on residential lots as follows:</p> <p>Landscaped areas are to be predominately areas of deep soil to allow the infiltration of rain water to the water table and reduce stormwater runoff. □ The location of deep soil areas should, where possible, facilitate the retention of existing trees and vegetation. □ Basement car parking should be contained within the building footprint to maximise areas for deep soil planting, □ Deep soil areas should be co-located with areas of private open space or communal open space, in the case of residential flat buildings and multi dwelling housing, to provide shade and amenity for residents. □ For lots fronting Warriewood Road, Macpherson Street and Garden Street at least two canopy trees are to be provided within the front setback. □ For lots fronting all other streets at least one small tree is to be provided within the front setback.</p> </p> | | | <ul style="list-style-type: none"> ▪ Noted ▪ Noted. Sufficient soil depths proposed within all communal open space areas to accommodate canopy tree plantings as per landscape plans. ▪ Subject site subdivided along zone boundary with development Lot R3 zoned portion only. ▪ The accompanying modified landscape plans nominate landscaping of a form, density and species consistent with the control with such landscaping prepared in consultation with the project bushfire consultant. ▪ Strict compliance is achieved/ maintained. |

| Provision | Response |
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| D16.10 Private and Communal Open Space | |
| <p>Communal Open Space Area</p> <p>For Residential Flat Buildings and Multi Dwelling Housing, 25% of the site area is to be communal open space. The communal open space should be located in areas of deep soil and have good solar orientation, but also provide opportunities for shade.</p> <p>For Residential Flat Buildings and Multi Dwelling Housing containing 20 or more dwellings, the communal open space is to contain a children's play area and permanent seating.</p> | <p>Approved quantum of communal open space maintained although communal facilities are significantly enhanced through the provision of additional communal facilities for occupants of the development including a covered fitness area with bathroom facilities, BBQ area and swimming pool.</p> |
| D16.11 Construction, retaining walls, terracing and undercroft areas | |
| <p>Outcomes</p> <ul style="list-style-type: none"> ▪ To achieve the desired future character of the Locality. To protect and minimise disturbance to natural landforms. To encourage building design to respond sensitively to natural topography. <p>Controls</p> <ul style="list-style-type: none"> ▪ Lightweight construction and pier and beam footings should be used in areas identified on the Biodiversity Map in the Pittwater Local Environmental Plan 2014. ▪ Where retaining walls and terracing are visible from a public place, preference is given to the use of sandstone or sandstone like materials. ▪ In the provision of outdoor entertaining areas, preference is given to timber decks rather than cut/fill, retaining walls and/or terracing. ▪ Undercroft areas shall be limited to a maximum height of 3.5 metres. Adequate landscaping shall be provided to screen undercroft areas. | <p>No changes to approved circumstance.</p> |
| D16.13 Building colours and materials | |
| <p>Outcomes</p> <ul style="list-style-type: none"> ▪ Achieve the desired future character of the Locality. ▪ The development enhances the visual quality and identity of the streetscape. (S) ▪ The colours and materials of the development harmonise with the natural environment. (En, S) ▪ To provide attractive building facades which establish identity and contribute to the streetscape. ▪ To ensure building colours and materials compliment and enhance the visual character its location with the natural landscapes of Pittwater. ▪ The visual prominence of the development is minimised. (S) The development reflects the natural amphitheatre of the locality. (En, S) | <p>No changes to approved colours and materials which will be utilised for the proposed covered communal open space area.</p> |

| Provision | Response |
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| <ul style="list-style-type: none"> ▪ Damage to existing native vegetation and habitat is minimised. (En) ▪ Colours and materials harmonise with the escarpment (S) <p>Controls</p> <ul style="list-style-type: none"> ▪ External colours and materials shall be natural tones such as green, brown and dark earthy colours. | |

Design Criteria Warriewood Land Release - Section C

| Provision | Response |
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| C6.3 landscape principles | |
| <p>Outcomes</p> <ul style="list-style-type: none"> ▪ Landscaping enhances and complements the natural environment and surrounding landscape character, reinstates elements of the natural environment, reduces the visual bulk and scale of development, and complements the design of the proposed development. Remnant bushland and wetland areas are conserved, local indigenous trees, shrubs and groundcover are retained, regenerated and promoted wherever possible. The canopy cover and the habitat value are increased. The natural landscape character of the area is improved. Landscaping promotes ecologically sustainable outcomes, maintaining and enhancing visual and environmental qualities, biological diversity and ecological ▪ processes. A pleasant and safe living environment that is environmentally responsive, resulting in a unified, high quality landscape character and high level of visual amenity that in turn contributes to the sense of place. New development is blended into the streetscape and neighbourhood. <p>Controls</p> <p>Landscaping Principles</p> <ul style="list-style-type: none"> ▪ <input type="checkbox"/> Promote landscape design and planning as part of a fully integrated approach to site development; <input type="checkbox"/> Be sensitive to the site attributes and context, such as streetscape character, natural landform, soils, existing vegetation, views, land capability, and drainage; <input type="checkbox"/> Protect and, where possible, incorporate existing significant trees, remnant vegetation and natural features; <input type="checkbox"/> Protect and enhance wildlife corridors and fauna habitats; <input type="checkbox"/> Provide planting schemes that reinforce the framework of endemic canopy trees with supplementary plantings of other suitable understorey and groundcover species. These may include species that have high ornamental qualities and/or provide food and habitat for native fauna and/or have aromatic flowers and foliage. In areas of high sensitivity only locally indigenous tree species should be used for the canopy; <input type="checkbox"/> Visually integrate the built form of the development into the natural and cultural landscapes of the Warriewood Valley; <input type="checkbox"/> Manage the micro-climate, through the provision of canopy trees for shade; <input type="checkbox"/> Maximise landscaped areas for on-site infiltration of stormwater; <input type="checkbox"/> Integrate and form linkages with parks, reserves and transport corridors; <input type="checkbox"/> Complement the functions of the street e.g. reinforcing desired traffic speed and behaviour; considering lines of sight for pedestrians, cyclists and vehicles; promoting safety and casual street surveillance; <input type="checkbox"/> Satisfy maintenance and utility requirements and minimise their visual impact. For example, undesirable visual elements such as blank walls, service areas, loading docks, and electrical sub-stations are adequately screened with shrub and tree plantings of suitable species at appropriate spacings; <input type="checkbox"/> Paving, structures, fencing and wall materials complement the architectural style and finishes of the buildings on the site. ▪ Development must be designed to maximise the restoration, retention and preservation of indigenous trees, shrubs and | <p>The previously approved integrated site landscape regime/ biodiversity/ communal open space outcomes are not compromised.</p> |

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| <p>groundcovers, as well as natural features, including rock features and watercourses.</p> <ul style="list-style-type: none"> ▪ Integration with Creekline Corridor and Public Open Space ▪ For land adjoining creekline corridors, buffer strips and reserves, preference should be given to local species identified as food sources for native fauna. Refer to species lists contained in the Warriewood Valley Landscape Masterplan and Design Guidelines (Public Domain). ▪ If the development site contains a section of Creekline Corridor, a landscape plan for the Creekline Corridor must be prepared. Details are to include: <ul style="list-style-type: none"> □ The creek and floodway particularly where the Inner Creekline Corridor is designed and is to be constructed to contain the 1% Annual Exceedence Probability (AEP) flow, □ Any revegetation to facilitate flora and fauna habitat, □ Pedestrian path/cycleway located above the 20% AEP flood level. □ The location of the pedestrian path/cycleway within the Outer Creekline Corridor where practicable, and □ If relevant, the location of any water quality control ponds and other water quality treatment measures. □ Extensive stands of <i>Casuarina glauca</i>, and groves of <i>Eucalyptus robusta</i> with other native feature trees and indigenous understorey and ground covers are to comprise a minimum of 75 % of the total creekline corridor area. In areas of low use, native groundcovers should be used as an alternative to lawn. ▪ The alignments of pedestrian paths/cycleways and associated landscaping must provide adequate sightlines for cyclists. ▪ Dwellings, garages and other vertical built structures must not be located within the private buffer strip (being the 25 metre wide Outer Creekline Corridor beyond the 25 metre wide Inner Creekline Corridor). Roads and impervious areas comprising of a maximum of 25% of the Outer Creekline Corridor area may be permitted subject to a merit assessment. ▪ Landscaping of existing and proposed Public Road Reserves ▪ Planting within the existing or proposed public road reserve is to be in accordance with the Warriewood Valley Landscape Masterplan and Design Guidelines (Public Domain) and the following: <ul style="list-style-type: none"> □ Street trees are to be planted within the road verge to be placed at 6 metre intervals; □ Species are to comply with the species list in the Warriewood Valley Landscape Masterplan; □ Species selected must not interfere with existing power lines. □ Plantings are to be 35 litre in size with 1 metre x 1 metre hole and backfilled with planting medium. □ Trees are to be staked with 2/50mm x 50mm stakes with hessian tie. □ Street trees are to be planted so as not to obstruct the free passage of pedestrians along the road verge or the future construction of a 1.5 metre footpath where none exists. □ Where possible all existing trees over 3 metres in height are to be retained within the road reserve areas. Such trees are to be protected through perimeter 1.8 metre high temporary fencing during the construction of works. □ Grassed areas are to be turfed with Couch species (weed free) to a maximum 4% grade <p>Landscaped Area</p> <ul style="list-style-type: none"> ▪ Due to the smaller lot sizes in Warriewood Valley and the resultant smaller dimensions of landscaped area, areas intended for landscaping should be predominately areas of deep soil. | |

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| <ul style="list-style-type: none"> ▪ Deep soil areas are areas of soil unobstructed by buildings or structures above or below the ground. Areas above the ground level do not contribute towards the deep soil area quantum. ▪ Deep soil zones have important environmental benefits, such as allowing infiltration of rain water to the water table and reduction of stormwater runoff, promoting healthy growth of large trees with large canopies and protecting existing mature trees. <p>In designing and siting dwellings, the following principles should be adhered to:</p> <ul style="list-style-type: none"> ▪ <input type="checkbox"/> Areas intended for landscaping should be predominately areas of deep soil, <input type="checkbox"/> The location of deep soil areas should, where possible, facilitate the retention of existing trees and vegetation. <input type="checkbox"/> Basement car parking should be contained within the building footprint to maximise areas for deep soil planting, <input type="checkbox"/> Deep soils areas should be co-located with areas of private open space or communal open space in the case of residential flat buildings and multi dwelling housing to provide shade and amenity for residents. <p>Communal Open Space Area</p> <ul style="list-style-type: none"> ▪ Areas of communal open space are required to be provided within residential flat buildings and multi dwelling housing developments. ▪ Areas of communal open space should be co-located with deep soils areas to provide shade and amenity for residents. ▪ A landscape plan of communal open space areas is to be prepared, showing connection and utility of this communal open space area for future residents of the development. <p>Variations Nil.</p> <p>Advisory Notes This control is to complement the related provisions under Pittwater LEP 2014 and Control B4.22 of this DCP.</p> <p>For landscape guidelines associated with creekline or road reserve interface, refer to the Warriewood Valley Release Area Landscape Masterplan and Design Guidelines (Public Domain) 2014 as amended.</p> | |
| <p>C6.5 The Road System and Pedestrian and Cyclist Network</p> | |
| <p>Outcomes</p> <ul style="list-style-type: none"> ▪ Sustainable transport and travel to, from and within Warriewood Valley together with less use of private motor vehicles. ▪ To facilitate a hierarchy of interconnected streets that give, safe, convenient and clear access within and beyond Warriewood Valley. ▪ To ensure sufficient carriageway and verge widths are provided to allow streets to perform their designated functions within the street network To accommodate public utilities, drainage systems and substantial street tree planting. ▪ To facilitate the alignment of roads fronting areas of public open space. Safety for all road users, particularly pedestrians, cyclists, | |

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| <p>children and older people. Safe, convenient and direct access by non-motorised means from residences to public transport, employment areas, adjoining sectors, open space, community facilities and other services. Provision of a range of traffic and transport routes throughout the Valley.</p> <p>Controls</p> <p>The Road System</p> <ul style="list-style-type: none"> ▪ A traffic analysis report and road plans for the sector, buffer area or development sites demonstrating that the objectives within this control will be achieved must be prepared by a suitably qualified professional. The road plans must comply with the relevant specifications and cross sections in Council's Warriewood Valley Roads Masterplan. <p>Design Requirements</p> <ul style="list-style-type: none"> ▪ All roads in Warriewood Valley must be designed with traffic calming devices to lower the vehicle speeds. Options to achieve this may include variation in width and alignment, pavement treatment, enhanced landscaping. The provision of safe crossing areas is required. ▪ The street pattern must provide direct, safe, and convenient pedestrian and cyclist access from housing and employment areas to public transport stops and to areas of open space, services and other facilities. Connectivity within the sector, buffer area or development site is required to ensure the majority of dwellings are within 400 metres walking distance to bus stops. ▪ The street layout and design is to consider opportunities for the retention of existing significant trees with the road reserve where possible. Trees may be incorporated with small, informal spaces that provide opportunities for 'greening of the street'. ▪ Roads and any traffic calming devices in Macpherson Street, Warriewood Road, Ponderosa Parade, Garden Street and Boondah Road must be able to cater for ultra-low floor articulated buses. <p>In order to address these objectives and controls, the Warriewood Valley Roads Masterplan, adopts the following road hierarchy: □ Sub-arterial Streets - Ponderosa Parade, Macpherson Street, Warriewood Road (east of Macpherson Street), Garden Street and Boondah Road. □ Collector Streets - Foley Street, Jubilee Avenue, Vineyard Street, Warriewood Road (west of Macpherson Street), Orchard Street, Daydream Street and any new road with traffic volumes 2000 to 5000 vehicles per day. □ Local Streets - Fern Creek Road and new roads within the sectors servicing up to 2000 vehicles per day. □ Access Streets – New roads located within sectors servicing less than 300 vehicles per day. □ Laneways – New roads located within sectors which are not primary street frontages servicing up to less than 300 vehicles per day. □ Sector Entry Streets - Primary entrance street to a Sector, Buffer Area or development site.</p> <ul style="list-style-type: none"> ▪ Refer to Warriewood Valley Roads Masterplan for the specifications and cross section for each road classification. | <p>The acceptability of the modified road, traffic and parking outcomes is detailed within the accompanying report prepared by MLA Transport Planning. The development as modified provides appropriately for internal road circulation and deliveries.</p> |

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| <ul style="list-style-type: none"> ▪ Driveway locations on Local Streets and Access Streets are to consider the impact on street trees and on street parking opportunities. <p>Laneways</p> <ul style="list-style-type: none"> ▪ For small lot housing, laneways should be used to provide rear loaded access. Design, dimensions and materials of the laneway should promote a slow speed driving environment distinctively different from a street. ▪ Laneways are to be provided with a suitable level of passive surveillance. ▪ Garbage collection areas are to be incorporated into the design of laneways to ensure access along the laneway is not hindered during garbage collection periods. Garbage bins are to be located in these collection areas only during the collection period. The garbage collection area(s) are not to be used for parking or storage <p>Temporary Roads</p> <ul style="list-style-type: none"> ▪ Where access arrangements have not been constructed in a timely manner, the construction of temporary roads may be permitted to enable an isolated property to develop ahead of the surrounding roads being constructed. ▪ In these circumstances temporary roads are permitted subject to the following criteria being satisfied: <input type="checkbox"/> The road is to cater for no greater than 300 vehicles per day; <input type="checkbox"/> A minimum carriageway width of 6m is provided to cater for two-way traffic; <input type="checkbox"/> The safety of all road users including service and passenger vehicles, pedestrians and cyclists is not compromised by the temporary road; <input type="checkbox"/> The final road configuration is consistent with the applicable specifications and cross section within the Warriewood Valley Roads Masterplan. ▪ The following information must be submitted in support of a development application proposing a temporary road construction: <input type="checkbox"/> Engineering design for the road, including details of any necessary water management, drainage and service utility provision requirements; and <input type="checkbox"/> Traffic report prepared by an appropriately qualified professional demonstrating how the temporary road provides for the safe usage of all road users including service and passenger vehicles, pedestrians and cyclists. <p>Half Width Road Construction</p> <ul style="list-style-type: none"> ▪ Due to the narrow width of some sectors, buffer areas or development sites in Warriewood Valley, it may be necessary for roads to be constructed across the boundary of two adjoining properties. ▪ Where a road is to be constructed along the boundary of two properties, the partial/half width construction of the road is permitted subject to the following criteria being satisfied: <input type="checkbox"/> A minimum carriageway width of 6m is provided to cater for two-way traffic; <input type="checkbox"/> The development potential of all adjoining allotments is maintained. The proposed development shall not, render any allotment adjoining or opposite the site of the proposed development incapable of residential development because the allotment would not meet the development standards set out in Pittwater LEP 2014 or the controls set out in this DCP; <input type="checkbox"/> The | <p>N/A</p> <p>N/A</p> <p>N/A</p> |

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| <p>safety of all road users including service and passenger vehicles, pedestrians and cyclists is not compromised by the partial road construction; <input type="checkbox"/> Where the road classification requires a footpath be provided, this is to be provided along the first completed side of the road; <input type="checkbox"/> The final road configuration is consistent with the applicable specifications and cross section within the Warriewood Valley Roads Masterplan, as amended.</p> <ul style="list-style-type: none"> ▪ The following information must be submitted in support of a development application proposing partial road construction: <input type="checkbox"/> Engineering drawings for the partial and full width of the road, including details of any necessary water management, drainage and service utility provision requirements; and <input type="checkbox"/> A traffic report prepared by an appropriately qualified professional demonstrating how the partial road proposal provides for the safe usage of all road users including service and passenger vehicles, pedestrians and cyclists. <p>Subdivision adjoining an existing public road</p> <ul style="list-style-type: none"> ▪ Where the subdivision adjoins an existing public road reserve, plans are to be submitted for the intersection treatment to the public road reserve and any works within the public road reserve including, road pavement, vertical kerb and gutter, footpaths and cycleways (minimum 1.5m width footpath or a minimum 2.1m width where a cycleway is required). All works associated with the intersection treatment (except those identified under the Warriewood Valley Section 94 Development Contributions Plan as amended) and within the public road reserve are to be carried out at full cost to the developer. <p>Roads within a Community Title subdivision</p> <ul style="list-style-type: none"> ▪ Where a subdivision is to be created under community title, the design and construction of the road and pedestrian network shall provide for full pedestrian and vehicular access and on-road parking shall comply with the relevant specifications and cross section under the Warriewood Valley Roads Masterplan. <p>Pedestrian and Cyclist Network</p> <ul style="list-style-type: none"> ▪ A pedestrian and cyclist network is to be provided in accordance with the Warriewood Valley Landscape Masterplan & Design Guidelines (Public Domain). ▪ The pedestrian/cycleway link should be located off road, where practical. Where a pedestrian/cycleway link is located in: <input type="checkbox"/> a public reserve, the minimum width is 2.5 metres, <input type="checkbox"/> the road verge adjacent to the road carriageway, the minimum width is 2.1m. ▪ Within the creekline corridor the pedestrian/cycleway network is to be sited above the 20% AEP flood level to reduce the incidence of flood damage to a manageable level and achieve a satisfactory safety level for regular use. The location of the pedestrian path/cycleway is variable to ensure connectivity with existing sections of the path can be provided and to ensure retention of vegetation. The alignment of the pedestrian/cycleway network must provide adequate sightlines for cyclists. ▪ The pedestrian/cycleway network must be accompanied by appropriate landscaping and vegetation. Details of the proposed landscaping and vegetation must accompany any development application. | <p>N/A</p> <p>N/A</p> <p>As approved. No change.</p> |

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| <ul style="list-style-type: none"> ▪ Where a pedestrian/cyclist link is identified within or adjoining a sector, buffer area or development site, the applicant is to identify on their development drawings the preferred location for this infrastructure. ▪ Reference should be made to Warriewood Valley Landscape Masterplan & Design Guidelines (Public Domain) for further information. <p>Variations Nil.</p> <p>Advisory Notes Reference should be made to Council's Warriewood Valley Roads Masterplan, AMCORD Part 2, Design Elements: Physical Infrastructure, and to the Traffic Authority of NSW Guidelines for Traffic Facilities, Part 7.3: Shared Traffic Zones.</p> <ul style="list-style-type: none"> ▪ In addition to the requirements under the Warriewood Valley Landscape Masterplan & Design Guidelines, the Warriewood Valley Roads Masterplan specifies a requirement for footpaths to be provided along roads of a certain classification. ▪ The pedestrian and cyclist network is funded through developer contributions levied for under the Warriewood Valley Section 94 Plan. | |

4.3 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

The proposed modifications do not compromise the developments performance when assessed against the 9 principles contained at Schedule 1 of SEPP 65 and the objectives of the Apartment Design Guide (ADG). No changes are proposed to the approved residential flat buildings and accordingly no design verification is required.

4.4 State Environmental Planning Policy (Sustainable Buildings) 2022

As the application proposes the introduction of a non-heated swimming pool the provisions of schedule 2 of this SEPP need to be considered. We note that clause 4 relates to swimming pools and spas.

We confirm that for the purpose of these provisions that the subject site is located in Area B with the non-heated swimming pool having a total volume of approximately 103,000L defined as a large swimming pool. In this regard, we confirm that the proposed swimming pool incorporate the following:

- A pump timer (clause 4(1)),
- A rainwater tank located within 10m of the edge of the swimming pool and connected to a tap (clauses 4(5) and 4(6)(a)), and
- The rainwater tank will have the capacity equal to or greater than the volume of water lost every day through evaporation and drainage and refilling (clause 4(6)(b))

No objection is raised to the above requirements forming appropriately worded conditions of consent.

5.0 Conclusion

This application seeks a refinement in the design of the internal road system and the provision of additional communal facilities for occupants of the development including a covered fitness area with bathroom facilities, BBQ area and swimming pool. This submission is accompanied by amended landscape plans prepared by Site Design + Studios reflecting the modified architectural detailing. These plans nominate plantings along the realigned internalised road to ensure that the development continues to sit within a landscaped setting. This application also seeks the modification of a number of conditions as detailed within this submission.

The acceptability of the modified internal road arrangement is detailed in the accompanying Traffic and Parking Review, dated 15th August 2023, prepared by MLA Transport Planning and the Bushfire Threat Assessment, dated 4th August 2023 prepared by AEP. These reports conclude that the modified road arrangement is acceptable and will in fact improve access and fire fighting abilities for the subject site.

Council can be satisfied that the development as modified remains substantially the same as the development originally approved Council can be satisfied that the development as modified remains substantially the same as the development originally approved and appropriately dealt with by way of Section 4.56 of the Act which enables Council as the consent authority to modify a Court issued consent.

Having given due consideration to the relevant considerations pursuant to s4.15 of the Act it is considered that the modifications, the subject of this document, succeeds on merit and is appropriate for the granting of consent.

Yours sincerely

BOSTON BLYTH FLEMING PTY LTD



Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director