

21st February 2025

The CEO
Northern Beaches Council
PO Box 82
MANLY NSW 2095

Dear Sir,

**Statement of Environmental Effects
Modification of Land and Environment Court Issued Consent
Whittaker v Northern Beaches Council [2019] NSWLEC 1038
Seniors Housing
69 - 71 Central Road, Avalon**

1.0 Introduction

On 6th February 2019 the Land and Environment Court of New South Wales (the Court) granted development consent N0512/17 for the demolition of the existing site structures and the construction of a seniors housing development incorporating 12 apartments and basement parking on the subject site pursuant to State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (SEPP HSPD).

We have been engaged to prepare an application to modify the consent pursuant to Section 4.56 of the Environmental Planning and Assessment Act 1979 (the Act). Specifically, the modifications provide for a refinement in the architectural detailing of the approved development to enhance amenity, internal layout efficiency, serviceability and constructability. Such modifications include provision for required Class 2 building BCA and servicing requirements and a minor increase in GFA/ FSR.

The modifications are generally contained within the approved building envelope such that the 3 dimensional form, streetscape appearance and landscape outcomes as approved are not compromised as consequence of the modifications sought.

Importantly, the spatial relationship of the proposal to adjoining development is maintained together with a complimentary and compatible streetscape presentation and appropriate residential amenity outcomes including privacy, solar access and view sharing.

To that extent Council can be satisfied that development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of section 4.56 of the Act.

This submission is accompanied by the following updated/ amended plans and documentation:

1. Architectural plans
2. Landscape plans
3. Access report
4. Arborist statement
5. BASIX certificate
6. BCA Report
7. Flood statement
8. Geotechnical statement
9. Landscape plans
10. Traffic and Parking Report
11. Stormwater plans

2.0 Detail of Modifications Sought

Architectural modifications

The proposed modifications are shown clouded on the following Revision D Architectural plans prepared by Gartner Trovato Architects:

DRAWING No:	DRAWING NAME
DA-00	COVER SHEET
DA-01	SITE PLAN & SITE ANALYSIS PLAN
DA-02	BASEMENT PLAN
DA-03	GROUND FLOOR PLAN
DA-04	LEVEL 1 PLAN
DA-05	LEVEL 2 PLAN
DA-06	ROOF PLAN
DA-07	ELEVATIONS
DA-08	ELEVATIONS
DA-09	SECTIONS A & B
DA-10	SECTIONS C & D
DA-11	SECTION E & F
DA-12	SECTION G
DA-13	SHADOW DIAGRAMS
DA-14	EXTERNAL COLOURS & MATERIALS
DA-15	PERSPECTIVE VIEW 1

The modifications can be summarised as follows:

Basement

1. Rationalise basement geometry in north-west corner.
2. Basement floor levels raised.
3. Car park ramp grades revised.

Ground Floor

1. Extend ground floor service area in north-west corner.
2. Ground floor carpark levels raised.
3. Car park ramp grades revised.
4. Length of planter in central courtyard area reduced 2.6 metres.
5. Services added.
6. Internal area of units 01, 02 & 03 increased.
7. Setback from south facade to south boundary decreased by between 250mm and 1,150mm.
8. Rear terrace areas of units 01, 02 & 03 increased.
9. Rear terraces of units 01, 02 & 03 reconfigured.
10. Hydrant tank added below driveway.

11. Wall thicknesses increased to accommodate cladding, structure, insulation, linings.

First Floor

1. Fire truck handstand added.
2. Hydrant area at front boundary revised.
3. Driveway ramp grades revised.
4. Pedestrian entry ramp revised.
5. Internal area of units 04, 05, 06, 07, 08 & 09 increased.
6. Terrace areas of units 04, 05, 06, 07, 08 & 09 increased.
7. Rear terraces of units 07, 08 & 09 reconfigured.
8. Area of common circulation increased.
9. Wall thicknesses increased to accommodate cladding, structure, insulation, linings.

Level 2

1. Internal area of units 10, 11 & 12 increased.
2. Terrace areas of units 10, 11 & 12 increased.
3. Area of common circulation increased.
4. Wall thicknesses increased to accommodate cladding, structure, insulation, linings.

Roof

1. Area of roof above common circulation increased.
2. AC units located on roof above common circulation.
3. Solar panels added.
4. Car park exhaust relocated.
5. Roof overhang in north-west corner of site increased by 500 mm.

Modification to conditions

The application also seeks the modification/ deletion of the following conditions:

Condition A1 - Approved Plans and Supporting Documentation

This condition is to be amended to reflect the modified plans and documentation referenced above.

Condition B19

This condition is to be deleted given that the AC units are now nominated on the roof where they will not be discernible from the street with PV panels also introduced.

Condition C9

This condition is to be modified to reference the updated stormwater plans.

Condition C23(a) and (b)

This condition is to be modified to reflect the modified architectural and landscape plans.

Condition D12

This condition is to be modified to reference the updated arborist report.

Condition D13

This condition is to be modified to reference the updated arborist report.

Condition D14

This condition is to be modified to reference the updated arborist report.

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.

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

Parliament has therefore made it plain that consent is not set in concrete. It has chosen to facilitate the modification of consents, conscious that such modifications may involve beneficial cost savings and/or improvements to amenity. The consent authority can withhold its approval for unsuitable applications even if the threshold of subs (1) is passed.

We agree with Bignold J in Houlton v Woollahra Municipal Council (1997) 95 LGRERA 201 who (at 203) described the power conferred by s.102 as beneficial and facilitative.

The risk of abuse is circumscribed by a number of factors. Paragraphs (a), (b) and (c) of subs (1) provide narrow gateways through which those who invoke the power must first proceed. Subsection (1A) and subs (2) ensure that proper notice is given to persons having a proper interest in the modified development. And there is nothing to stop public consultation by a Council if it thinks that this would aid it in its decision making referable to modification.

Finally, subs (3A), coupled with the consent authorities discretion to withhold consent, tend to ensure that modifications will not be enterprised, nor taken in hand, unadvisedly, lightly or wantonly. Naturally some modifications will be controversial, but decision making under this Act is no stranger to controversy.

Senior Commission Moore in *Jaques Ave Bondi Pty Ltd v Waverly Council (No.2) (2004) NSWLEC 101* relied upon Moto Projects in his assessment of a modification application involving an increase in the number of approved units in the development by 5 to a total of 79 with the 5 additional units located within an additional level of accommodation. Although the appeal was ultimately dismissed on other grounds Moore concluded the degree of change resulting from the 5 additional apartments did not result in a development which was not substantially the same, despite the fact that in that case the changes included an overall increase in height of the building. Moore relied upon a quantitative and qualitative assessment of the changes as determined by the Moto test.

Consideration must also be given to the recent findings of the court in the matters of *Realize Architecture Pty Ltd v Canterbury-Bankstown Council [2023] NSWLEC 1437* and *Canterbury-Bankstown Council v Realize Architecture Pty Ltd [2024] NSWLEC 31*. What can be discerned from the findings in the above matters is that the Court approached its interpretation of the ‘substantially the same’ test in the following ways (consistent with the guidance of earlier Court decisions quoted throughout the Judgments).

- Comparing the quantitative differences between the proposed modified development against the original approved development.
- Comparing the qualitative differences between the proposed modified development against the original approved development.
- Comparing the critical elements of the proposed modified development against the original approved development.
- Most importantly, by then balancing the evidence in respect of all of those factual comparisons before forming a subjective opinion as to whether the proposed modified development was ‘substantially the same’ as the original approved development.

Having regard to the above considerations we provide the following analysis.

Quantitative differences

- A 137 square metre increase in GFA with the additional floor space located generally within the approved building envelope.
- A 76 square metre reduction in landscape area although 49% landscaped area maintained.
- No change in overall building height.
- No change to the approved carparking
- Stormwater management regime not compromised.

Qualitative differences

- The modifications do not compromise the overall design quality of the development.
- The modifications will not be perceived as inappropriate or jarring in a streetscape context.
- The modifications do not give rise to any unacceptable or non-compliant residential amenity impacts in terms of views, privacy or solar access.
- The development will continue to be appropriately serviced in relation to car parking and waste management.
- The development remains safe from flooding hazard.

Critical elements

- The proposal remains an application proposing seniors housing in an accessible location.
- The building will continue to display a contextually appropriate fit with acceptable streetscape and residential amenity outcomes.
- The environmental outcomes achieved through approval of the original application in terms of excavation, tree retention, landscaping, stormwater management and flooding are not compromised

Balancing

We are satisfied that the critical elements of the proposal are maintained and that the quantitative and qualitative differences are not such as to render the developments not substantially the same.

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

5.0 State Environmental Planning Policy (Housing for seniors or people with a disability) 2004.

In accordance with clause 2(1)(da) of Schedule 7A Savings and Transitional Provisions within State Environmental Planning Policy (Housing) 2021 the provisions of the repealed SEPP HSPD continue to apply to this modification application.

Development standards to be complied with

Pursuant to clause 40 of SEPP HSPD a consent authority must not consent to a development application unless the proposed development complies with the standards specified in this clause:

40(4) Height in zones where residential flat buildings are not permitted

(a) The height of all buildings in the proposed development must be 8 metres or less, and

Comment: The modifications do not result in any changes to the previously approved building heights.

(b) A building that is adjacent to a boundary of the site must be not more than 2 storeys in height, and

Comment: The modifications do not alter the approved number of storeys.

(c) A building located in the rear 25% area of the site must not exceed 1 storey in height

Comment: The modifications involve very minor first floor intrusions into the rear 25% setback area as depicted on the plans. Such minor intrusions do not in any way compromise the amenity of adjoining development or impact the trees at the rear of the property. Strict compliance is unreasonable and unnecessary under the circumstances and able to be supported on merit given the minor nature of the breach and absence of adverse environmental impact.

Self-contained dwellings

Schedule 3 of the SEPP specifies standards that self-contained dwellings must be designed to be in accordance. It is normal for these requirements to form conditions of development consent. The self-contained dwellings as modified are able to comply with the relevant provisions and it is usual for the Council to condition certification of the finished dwellings to conform to these standards.

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

Clause 50 of the SEPP requires that a Consent Authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a self-contained dwelling on any of the following grounds:

- a) **building height:** *if all proposed buildings are 8 metres or less in height*

Comment: No change.

- b) **density and scale:** *if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less,*

Comment: As previously indicated, the GFA is increased by 137m² to 1463m² representing an FSR of 0.62:1. The additional floor space is located predominantly within the approved building envelope such that it does not contribute to any discernible extent to the density and scale of the building. Under such circumstances, compliance with the FSR standard is unreasonable and unnecessary with the increase in GFA/ FSR significantly enhancing the design quality and amenity of the development.

- c) **Landscaped Area:** *a minimum of 30% of the area of the sites is to be landscaped,*

Comment: The proposed development continues to incorporate 1150.5 m² of soft landscaped area equating to 49% of the site area in strict accordance with this standard.

- d) **Deep Soil Zones:** *if, in relation to that part of the site that is not built upon, paved or otherwise sealed, there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the area of the site. Two thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3 metres*

Comment: The modified development continues to provide in excess of 15% deep soil landscaping as depicted on the accompanying landscape plans.

- e) **solar access:** *Living rooms and private open spaces for a minimum of 70% of the dwellings of the development must receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter;*

Comment: the development remains compliant with the minimum 70% of the dwellings receiving a minimum of 3 hours direct sunlight between 9am – 3pm in mid-winter with 80% of apartment satisfying this standard.

f) private open space for in-fill self-care housing:

- i) *in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and*
- ii) *In the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area.*

Comment: All terraces/ balconies continue to exceed the minimum prescriptive standards associated with SEPP and comprise functional spaces, extending from the living/dining room areas.

g) *Parking:* at least the following is provided:

- i) *0.5 car spaces for each bedroom where the development application is made by a person other than the Department of Housing or a local government or community housing provider.*

Comment: The development continues to provide compliant off-street carparking.

The table below provides a summary of details in respect to compliance with standards that apply to this development proposal.

SUMMARY OF COMPLIANCE WITH STANDARDS			
Standard	Required	Provided	Complies
Location, Facilities and Support Services (Clause 26 SEPPHSPD)	Site within 400m of transport that can provide access to Facilities and Support Services	No change	Yes
Building Frontage (Clause 40(3) SEPPHSPD)	Minimum street frontage of 20 metres wide at building line.	>20 metres at building alignment.	Yes
Wheelchair Access Requirements (Schedule 3)	100% access to road or internal driveway; 10% access to adjoining road; 100% access to common areas and facilities; 100% adaptable to disabled persons requirements	100% access to road or internal driveway; greater than 10% access to adjoining road; 100% access to common areas and facilities; 100% adaptable to disabled persons requirement. Refer to accompany access report.	Yes
Height (Clause 40(4) SEPPHSPD)	<8.0m 2 storeys at boundary. Single storey in rear 25% of site.	No change 2 storeys Minor 2 storey encroachments in rear 25%.	No – minor non-compliances acceptable on merit

FSR (Clause 50(b) SEPPHSPD)	Threshold of 0.5:1	The GFA is increased by 137m ² to 1463m ² representing an FSR of 0.62:1. The additional floor space is located predominantly within the approved building envelope such that it does not contribute to any discernible extent to the density and scale of the building. Under such circumstances, compliance with the FSR standard is unreasonable and unnecessary with the increase in GFA/ FSR significantly enhancing the design quality and amenity of the development.	No – Acceptable on merit
Landscaped Area (Clause 50(c) and (d) SEPPHSPD)	Minimum 30% of site as landscaped area. Deep soil zone –15% of site area.	49% of site landscaped. >15% deep soil zone.	Yes Yes
Parking total 36 bedrooms (Clause 50(h) SEPPHSPD)	18 resident spaces	No change	Yes
Neighbour amenity and streetscape (Clause 33 SEPPHSPD)	Attractive residential environment		Satisfactory
Visual and Acoustic Privacy (Clause 34 SEPPHSPD)	Appropriate site planning and acceptable noise levels		Satisfactory
Solar Access (Clause 35 SEPPHSPD)	Adequate daylight to living areas of neighbours and sun to POS		Satisfactory
Stormwater (Clause 36)	Minimise stormwater run-off.		Satisfactory
Crime Prevention (Clause 37 SEPPHSPD)	Personal property security for residents and visitors and encourage crime prevention.		Satisfactory
Accessibility (Clause 38 SEPPHSPD)	Access to public transport, parking and disabled access to all aspects of the development.		Satisfactory
Waste Management (Clause 39 SEPPHSPD)	Waste facilities that maximise recycling.		Satisfactory

6.0 Pittwater Local Environmental Plan 2014

6.1 Zone and Zone Objectives

The subject property is zoned Residential R2 Low Density pursuant to Pittwater Local Environmental Plan 2014. Dwelling houses are permissible with consent in the zone. As such, this form of development is permissible in the zone pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ("SEPP HSPD"). The property is not heritage listed or located within a heritage conservation area.

The stated zone objectives are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

The modified development continues to meet the relevant zone objectives by providing housing which will meet the needs of the community. The height and scale of the modified development is responsive to context, compatible with that of adjoining development and will not result in unacceptable or jarring residential amenity or streetscape impacts.

PLEP 2014 also contains other provisions applicable to development on the land and although such provisions cannot derogate from SEPP HSPD consideration has been given as follows.

6.2 Biodiversity

Pursuant to Clause 7.6 PLEP 2014 the subject site is mapped as within a biodiversity area however. Whilst the application requires the removal of a number of trees as identified in the accompanying arborist report prepare by Treeism such report confirms that the removal will have no impact on the natural populations of any threatened species under the TSC Act. Further, pursuant to the clause 7.6(4) considerations, Council can be satisfied that the development is designed, sited and will be managed to avoid any significant adverse environmental impact.

Accordingly, there is no statutory impediment to the granting of consent.

6.3 Geotechnical Hazards

Pursuant to clause 7.7 of the PLEP 2014 the site is identified as Hazard H2 on the Geotechnical Map.

The application is accompanied by a geotechnical addendum prepared by Crozier Geotechnical Consultants which contains the following commentary:

The proposed changes to the original design do not alter the geotechnical aspects of the proposed development or the site from those on which the original report was based. Including the critical aspects of geotechnical assessment of excavation support systems.

As such we see no geotechnical reason for these changes not to be approved, provided all works are undertaken as per the recommendations of our reports.

6.4 Flood Risk Management

The rear portion of the site is identified as flood prone land and accordingly these provisions apply to development proposing seniors housing.

In this regard, the application is accompanied by an addendum Flood Statement prepared by JHA which contains the following commentary:

Therefore, it is concluded that the proposed changes have no impact on the flood compliance of the proposed development, and the previous flood report remains valid.

Accordingly, there is no statutory impediment to the granting of consent.

7.0 Compliance Table – Pittwater 21 DCP

Site Area 1115 m ²	Control	Proposed	Compliance
Side Boundary Setback	Min 1 / 2.5 metre	All setbacks well in excess of control	Yes
Front Building Setback	Min 6.5m	6.5m	Yes
Rear Building Setback	Min 6.5 metres	>6.5m	Yes
Building Envelope	3 metres/ 45 degree envelope	Minor breaches to the east and west elevations predominately to the roof eaves.	No - Minor breaches acceptable on merit

The balance of the DCP provisions pertaining to traffic access and safety, parking, stormwater, erosion and sedimentation, excavation, waste management, private open space, access to sunlight, privacy, building bulk and landslip risk have been addressed previously in this report in response to the SEPPHSPD considerations.

8.0 Matters for Consideration Pursuant to Section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979(as amended):

The provision of any planning instrument, draft environmental planning instrument, development control plan or regulations.

The modified development continues to respond positively to the applicable statutory planning regime with the urban design, streetscape, heritage conservation, residential amenity, landscape, flooding and drainage outcomes afforded through approval of the original application not compromised.

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

Context and Setting

i) *What is the relationship to the region and local context on terms of:*

- *the scenic qualities and features of the landscape?*
- *the character and amenity of the locality and streetscape?*
- *the scale, bulk, height, mass, form, character, density and design of development in the locality?*
- *the previous and existing land uses and activities in the locality?*

The modifications sought are contained predominantly within the approved building envelope, or not discernible as viewed from outside the site, with the 3 dimensional form, streetscape appearance and landscape outcomes as approved not compromised as consequence of the modifications sought.

ii) *What are the potential impacts on adjacent properties in terms of:*

- *relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)?*
- *visual and acoustic privacy?*
- *views and vistas?*
- *edge conditions such as boundary treatments and fencing?*

The approved development will remain, in its modified state, a development which will continue to relate to its surrounds and adjoining development in the same fashion as originally approved in terms of view sharing, height, boundary setbacks, privacy and landscape outcomes.

Access, transport and traffic

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

- *travel demand?*
- *dependency on motor vehicles?*
- *traffic generation and the capacity of the local and arterial road network?*
- *public transport availability and use (including freight rail where relevant)?*
- *conflicts within and between transport modes?*
- *traffic management schemes?*
- *vehicular parking spaces?*

The development continues to provide appropriately for off-street car parking.

Public domain

There are no public domain changes.

Economic impact in the locality

The proposed development will provide short term employment opportunities during construction.

Site design and internal design

i) *Is the development design sensitive to environmental conditions and site attributes including:*

- *size, shape and design of allotments?*
- *the proportion of site covered by buildings?*
- *the position of buildings?*
- *the size (bulk, height, mass), form, appearance and design of buildings?*
- *the amount, location, design, use and management of private and communal open space?*
- *landscaping?*

The modifications are generally contained within the approved building envelope such that the 3 dimensional form, streetscape appearance and landscape outcomes as approved are not compromised as consequence of the modifications sought. Importantly, the spatial relationship of the proposal to adjoining development is maintained together with a complimentary and compatible streetscape presentation and appropriate residential amenity outcomes including privacy, solar access and view sharing.

ii) *How would the development affect the health and safety of the occupants in terms of:*

- *lighting, ventilation and insulation?*
- *building fire risk – prevention and suppression/*
- *building materials and finishes?*
- *a common wall structure and design?*
- *access and facilities for the disabled?*
- *likely compliance with the Building Code of Australia?*

The development, as modified, will comply with the provisions of the Building Code of Australia as detailed within the accompanying BCA Compliance Statement.

Construction

i) *What would be the impacts of construction activities in terms of:*

- *the environmental planning issues listed above?*
- *site safety?*

Normal site safety measures and procedures will ensure that no site safety or environmental impacts will arise during construction.

The suitability of the site for the development.

Does the proposal fit in the locality?

- *are the constraints posed by adjacent developments prohibitive?*
- *would development lead to unmanageable transport demands and are there adequate transport facilities in the area?*
- *are utilities and services available to the site adequate for the development?*

The adjacent development does not impose any insurmountable development constraints. The site is well located with regards to utility services and public transport. There will be no excessive levels of transport demand created.

Are the site attributes conducive to development?

The site has no special physical or engineering constraints and is suitable for the proposed development.

Any submissions received in accordance with this Act or the regulations.

It is envisaged that any submissions made in relation to the proposed development will be appropriately assessed by Council.

The public interest.

It is considered that the development will result in a significant addition of good design to the locality. The development is consistent with the adopted planning regime and the Court approval.

9.0 Conclusion

The modifications provide for a refinement in the architectural detailing of the approved development to enhance amenity, internal layout efficiency, serviceability and constructability. Such modifications include provision for required Class 2 building BCA and servicing requirements and a minor increase in GFA/ FSR.

The modifications are generally contained within the approved building envelope such that the 3 dimensional form, streetscape appearance and landscape outcomes as approved are not compromised as consequence of the modifications sought.

Importantly, the spatial relationship of the proposal to adjoining development is maintained together with a complimentary and compatible streetscape presentation and appropriate residential amenity outcomes including privacy, solar access and view sharing.

To that extent Council can be satisfied that development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of section 4.56 of the Act.

Having given due consideration to the relevant considerations pursuant to s4.15(1) of the Act it is considered that the application, the subject of this document, succeeds on merit and is appropriate for the granting of consent.

Yours sincerely

BOSTON BLYTH FLEMING PTY LIMITED

A handwritten signature in black ink, appearing to read 'Greg Boston', with a stylized flourish at the end.

Greg Boston

B Urb & Reg Plan (UNE) MPIO

Director