

## SYDNEY NORTH PLANNING PANEL COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	PPSSNH-303
<b>DA Number</b>	Mod2022/0070
<b>LGA</b>	Northern Beaches
<b>Proposed Development</b>	Modification of Development Consent N0440/15 granted for the construction of a residential development, comprising 81 dwellings
<b>Street Address</b>	Lot 1 DP 5055, 8 Forest Road WARRIEWOOD NSW 2102
<b>Applicant/Owner</b>	Architecture Design Studio Pty Ltd Jubilee Developments Pty Ltd 8 Forest Road Pty Ltd
<b>Date of DA lodgement</b>	25/03/2022
<b>Number of Submissions</b>	6
<b>Recommendation</b>	Approval
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)</b>	Section 4.56 Modification Application to a Regionally Significant Development pursuant to Schedule 7 Clause 2
<b>List of all relevant s4.15(1) (a) matters</b>	(i) – (iv)
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• BCA Assessment Report (114511-BCA-r3)</li> <li>• Report on Geotechnical Assessment (81022041)</li> <li>• Ecological Matters Letter (1377.07)</li> <li>• Response to Request for Additional Information for Ecological Matters Letter (1377.08)</li> <li>• Rooftop Mechanical Plant Review (20220591.1/3005A/R0/HD)</li> <li>• Thermal Comfort and BASIX Assessment (Issue. D)</li> <li>• Traffic and Parking Review (20027101B-220118)</li> </ul>
<b>Clause 4.6 requests</b>	Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
<b>Summary of key submissions</b>	Substantially the same; height of buildings; increased density
<b>Report prepared by</b>	Adam Susko, Principal Planner
<b>Responsible Officer</b>	Adam Susko, Principal Planner
<b>Report date</b>	7 September 2022

### Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **YES**

### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP **YES**

### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **N/A**

**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)? Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions **NO**

**Conditions**

Have draft conditions been provided to the applicant for comment? Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council’s recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report **YES**

**EXECUTIVE SUMMARY**

This Section 4.56 Modification Application is referred to the Sydney North Planning Panel ('SNPP') for determination as it is a modification to a regionally significant development pursuant to the Schedule 7 Clause 2 of the State Environmental Planning Policy (State and Regional Development) 2011.

The application is subsequent to the approved Development Consent N0440/15 granted by the Land and Environment Court for subdivision and the construction of 81 dwellings with associated landscaping and civil works.

The modifications proposed under this application generally pertain to a refinement of the exterior appearance of the building; a rationalisation of the internal layouts, including; the car park; the reinstatement of a previously deleted loft level, the addition of air-conditioning units atop of the flat building roofs, and the increase in density from 7 x one bedroom apartments to two bedrooms, and 6 x two bedrooms apartments to three bedrooms.

The exhibition of the proposal attracted six (6) submissions from neighbouring properties, the content of which has been considered in this assessment report. Generally, the submissions object to the principle of the parent development application and not to the content of the modification application.

This report demonstrates that the changes sought are substantially the same as the approved development and that the modifications do not materially impact on surrounding properties, the environment, or the quality of accommodation afforded to future occupants.

This report concludes with the recommendation that the SNPP, as the consent authority, should **APPROVE** the modification application.

**PROPOSED DEVELOPMENT IN DETAIL**

This modification application is submitted pursuant to Section 4.56 of the Environmental Planning and Assessment Act 1979. Whilst the parent Development Consent N0440/15 was determined by the Land and Environment Court of NSW (**LEC**) and not the Sydney North Planning Panel (**SNPP**) (formally the Joint Regional Planning Panel), the application is mandated to go to the SNPP for determination.

The application seeks consent to permit physical changes to the approved built form, and corresponding changes to conditions.

The physical changes sought include:

- The re-introduction of a loft level, previously approved but subsequently deleted from the fourteen townhouses.
- Internal reconfiguration of apartments and increasing seven apartments from one to two bedrooms, and six apartments from two to three bedrooms.
- Changes and detailing to all building facades to facilitate internal changes, and to enhance balcony spaces.
- Addition of air-conditioning units on the roof of the flat buildings.
- Amendment to the basement layout including improved circulation.

To facilitate the above physical changes, the Modification Application seeks to amend the following conditions:

- A1(a) - to be modified to reflect the modified plans and consultant reports.
- B28 - to be deleted to permit the placement of air-conditioning units on the roof.
- B67 - to be modified to reflect the modified dwelling mix.

## AMENDED INFORMATION

During the assessment, Council requested revised information from the applicant, including:

- A revised BCA Report
- A revised Acoustic Report addressing the rooftop air-conditioning units
- A response to questions raised by the SNPP
- A response to questions raised by the objectors

The applicant provided the requested information and it forms the basis of this assessment.

## QUESTIONS ARISING FROM SNPP BRIEFING

On 15 June 2022, Council briefed the SNPP on the application. In that meeting, the Panel raised several questions which Council put to the applicant to respond to. Those questions are listed below in **bold**, with the applicant's response shown in *italics*.

- **Whether the increase in the number of bedrooms will substantially increase density or building footprint – please confirm the approved maximum density (# beds) vs proposed density, and whether this equates to any increased footprint.**

*Response: The proposed modifications result in an increase in approved bedroom numbers from 175 to 188 with the additional bedrooms generally accommodated within the previously approved building footprint/envelope. We note that the previously approved dwelling density of 81 dwellings across the site is maintained with the additional bedrooms reflective of a change in apartment mix to better meet market demand rather than increase in dwelling density.*

- **Evidence that the development consent has been activated within the prescribed time**

limit.

Response: *The development consent to which this modification relates was approved by the Land and Environment Court by way of a deferred commencement consent on 3rd May 2017. Although it is normal for a consent granted by the Court to lapse 5 years from the date of determination section 4.53 (1)(c) of the Environmental Planning and Assessment Act 1919 (the Covid 19 provisions) provides that a development consent lapses 2 years after the date on which the development consent would otherwise have lapsed if the development consent commenced operation before, and has not lapsed at, the commencement of the prescribed period being 25th of March 2020. Accordingly, the consent does not lapse until 3rd May 2024.*

[...] *Correspondence confirms that the consent became operative on 28th September 2017. Council records will confirm that the works required to affect the widening of the access roadway and bridge between Jubilee Avenue and the subject site, as required by the consent, commenced in October 2017 pursuant to the Roads Act with such works representing physical commencement of the development consent.*

*Notwithstanding, Construction Certificate CC2022/0385 was issued on 19th April 2022 with works currently being undertaken on-site pursuant to this construction certificate. Physical works have commenced and accordingly the consent has not lapsed.*

- **Confirmation that any site works carried out already are a part of the original consent, not a part of the works sought under this modification application.**

Response: *We confirm that the only works undertaken on-site to date are in strict accordance with Construction Certificate No. CC 2022/0385 which relates only to works approved pursuant to the original consent.*

- **Plans comparing approved vs. proposed changes.**

Response: *As requested, please find attached architectural plans clearly comparing the approved v proposed modifications.*

- **Details of the screening proposal of air-conditioning units.**

Response: As requested, the accompanying plan A903(01) provides details as to the proposed aluminum louvred screens to the roof mounted air condensers.

- **Whether the bedroom layouts meet accessibility requirements (the Panel was of the opinion that the beds shown on the plans in the accessible units had been shrunk on the drawings).**

Response: We confirm that Master bedrooms were provided with king size beds and secondary bedrooms were provided queen sized beds. For Adaptable units queen beds were provided for all bedrooms which meets compliance. Please refer to accompanying adaptable unit drawings A501(06), A502(06) and A503(6).

## ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S4.15 Assessment  
 Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards  
 Pittwater 21 Development Control Plan - A4.14 Warriewood Locality

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 5055 , 8 Forest Road WARRIEWOOD NSW 2102
<b>Detailed Site Description:</b>	The subject site is Lot 1 in Deposited Plan 5055, and is known as No. 8 Forest Road, Warriewood. Narrabeen Creek

runs along the northern boundary of the site, creating a slightly irregular rectangular shaped allotment, with a total area of 5.678 hectares.

The site is subject to a split zoning; with 2.855 Hectares zoned R3 Medium Density (R3) and the remaining 2.823 Hectares zoned RU2 Rural Landscape (RU2) of Pittwater Local Environmental Plan 2014. The division between the zones is irregular, dissecting the 324.48m long western boundary at a distance of approximately 231m from the south-western corner of the site and the 275.20m long eastern boundary at a distance of approximately 70m from the south-eastern corner of the site.

The zone boundary is consistent with the boundary of the Warriewood Valley Release Area, and the R3 zoned portion of the site forms part of "Sector 501" of the Warriewood Valley Release Area, as shown on the Warriewood Valley Release Area Map of PLEP 2014. The portion of the site zoned RU2 is not within the Warriewood Valley Release Area.

The R3 zoned portion of the site previously contained multiple outbuildings and dilapidated glass houses, which have since been demolished under a separate CDC. An existing dwelling straddles the zone and Land Release boundary, but is primarily situated on R3 zoned land. In the image below, the cleared portion of land to the north of the site is the developable area subject to this application.

The RU2 zoned portion of the site is heavily landscaped and free of development.

Access is currently gained from the north-eastern corner of the site, via a roadway that was constructed within the Jubilee Road public road reserve by the owners of the adjoining Community Title residential estate to the east (previously known as 6 Forest Road). With the exception of this one existing residential estate to the east and a portion of RU2 zoned land to the north, Jubilee Avenue is characterised by industrial and business park development, including warehouses, offices, wholesalers, and a number of childcare centres.

An unmade public road reserve (Boundary Street) adjoins the western property boundary, with large vegetated parcels of E2 Environmental Conservation (E2) zoned land to the west and south-west. Mater Maria Catholic School is situated to the south, separated from the site by an unmade public road reserve (Forest Road). No. 4 Forest Road, an undeveloped R3 zoned allotment, adjoins the south-eastern portion of the Site, forming the remainder of Sector 501 of the Warriewood Valley Release Area, as shown on the

Warriewood Valley Release Area Map of PLEP 2014. The remainder of properties along Forest Road comprise medium density residential development.

Map:



## SITE HISTORY

- **Development Application N0440/15** for the subdivision of land into four (4) lots and construction of a residential development incorporating 81 dwellings and associated civil works and landscaping. Approved by the Land and Environment Court of NSW on 03 May 2017.

That application included the retention of the existing *Oaklands* dwelling and construction of 14 townhouses and 66 apartments across four (4) residential flat buildings, over basement car parking for 190 vehicles. The consent also requires the dedication of half a hectare of creekline corridor to be dedicated to Council.

- **Modification Application N0440/15/S96/1** to modify the approved development consent. Approved by Council on 09 April 2018.
- **Modification Application MOD2018/0019** to modify the approved development consent by way of providing a staged construction of the approved development, and the release of the Torrens Title subdivision prior to the finalisation and Strata Subdivision of individual dwellings. The application also included physical works, however they were removed during the course of the assessment and did not form part of the approval as modified.

The application was approved on 10 June 2018 and of note, as detailed later in this report, introduced Condition nos. 1A, B72, B73, B74, B75, C9, E18, E19, F4 and F5 to the overall consent, whilst deleting Condition nos. F1, F2 and F3.

- **Modification Application MOD2018/0566** to modify the design of the 14 approved town houses by deleting the third floor loft space from each dwelling and modifying the roof. Approved by Council on 13 December 2018.
- **Modification Application MOD2021/0816** to reverse the staging elements approved under MOD2018/0019 and remove conditions under that consent. The application also sought to modify conditions to permit multiple Occupation Certificates to be issued, rather than a singular Occupation Certificate as required under the parent consent. Approved by the Sydney North Planning Panel on 24 February 2022.

An aerial photograph shows the commencement of development on the site, dated 21 August 2022 and from *Nearmap*:



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

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

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

- An assessment report and recommendation has been prepared and is attached taking into all



relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;

- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for N0440/15, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56 - Other Modifications	Comments
(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the 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	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under N0440/15.
(b) it has notified the application in accordance with:  (i) the regulations, if the regulations so require,  or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of N0440/15.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

### Section 4.15 Assessment

In accordance with Section 4.56 of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into

consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application, and with this current design under this modification application.</p> <p><u>Clauses 43</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to submission responses, BCA compliance and acoustic impacts from the rooftop A/C units. The requested information has been provided and is assessed as a part of this application.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 61</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2000 requires the consent</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter has been addressed via a condition in the original consent.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<ul style="list-style-type: none"> <li>• (i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</li> </ul> <p>In summary, the development does not result in any vegetation removal over and above that already authorised in the parent development consent. The overall visual impact of the development is considered to be retained or enhanced through the refinement of architectural detailing, particularly on the buildings facades.</p> <ul style="list-style-type: none"> <li>• (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</li> </ul> <p>The proposal is not expected to generate any amenity impacts to neighbouring properties of the overall Warriewood locality over and above that of the parent consent, and therefore the scope of works sought under this modification application will maintain an acceptable social impact.</p> <ul style="list-style-type: none"> <li>• (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</li> </ul>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification &amp; Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The subject site is mapped as being bushfire prone land. A letter was provided with the application which states that:

*"The bushfire and ecology impacts assessed in the Bushfire Impacts Statement (ABPP, 2016) and the Ecological Assessment report (AEP, 2020) are unchanged, hence these assessments do not require amendment.*

The proposal was also referred to the NSW Rural Fire Service who raised no objections to the proposed modifications.

Therefore the recommendations of the bushfire reports and conditions contained in the parent consent remain valid and unchanged by this application.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 15/04/2022 to 13/05/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Ms Rhonda-Lee Cameron	2 / 237 Macpherson Street WARRIEWOOD NSW 2102
Ms Janis Hall Patulny	1 / 237 Macpherson Street WARRIEWOOD NSW 2102
Ross William Fraser	13 Bert Close WARRIEWOOD NSW 2102
Rebecca Jane Lumley	68 / 2 Forest Road WARRIEWOOD NSW 2102
Alexander Cooke	Address Unknown
Pharm-a-care Laboratories Pty Ltd	18 Jubilee Avenue WARRIEWOOD NSW 2102

The following issues were raised in the submissions:

- Construction traffic management and safety measures
- On-going traffic impacts and pedestrian safety
- Stormwater and flood management

The above issues are addressed as follows:

- **Construction traffic management and safety measures**

The submissions raised concerns that the volume of construction traffic necessary to complete a build of this size would have an adverse impact on the existing traffic flow, volume and subsequently have adverse impacts on safety for road users and pedestrians.

Comment:

The modifications do not seek to alter the approved access into or out of the site, and does not seek to change any construction methodology. To this extent, there is limited scope within the modification to enforce specific construction requirements above and beyond the current consent. However, it has been noted that existing Condition C8 pertaining to the Construction Traffic Management Plan contains minimal details, and that the consent would benefit from having a more robust condition with additional requirements for the consideration of the project certifier.

Therefore, the recommendation of this report includes a revised Condition C8 to ameliorate these concerns.

- **On-going traffic impacts and pedestrian safety**

The submissions raised concerns that the number of dwellings and proposed access and egress arrangements will impact on traffic and pedestrians.

Comment:

The modifications sought under this application do not change the access or egress arrangements for the development.

- **Stormwater and flood management**

A submission raised concerns with regards to stormwater and flood management, and included a list of questions. It is not the role of Council to respond directly to all submissions, however Council did request that a response from the applicant be provided in relation to the questions asked.

Comment:

The questions and concerns raised within the submission do not raise any matters that would warrant the refusal of the application. The proposal has been reviewed by Council's stormwater engineers, development engineers and water management officers who raised no objections to the proposal, subject to conditions.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b><i>Not Supported - resolved by conditions</i></b></p> <p>Council's Building Assessment Officer has requested an Access Report, and an updated BCA Report which includes reference to the latest revision of plans.</p> <p>The requirement for an Access Report is addressed by way of condition in the parent development consent.</p> <p>A revised BCA Report has been provided which addresses the Building Assessment Officer's request, and that report is endorsed via condition.</p>

Internal Referral Body	Comments
<p>Environmental Health (Contaminated Lands)</p>	<p><b><i>Supported, without conditions</i></b></p> <p>Proposed modifications would not impact any condition pertaining to contaminated land or material management relating to consent document N0440/15, there is not a request to modify conditions relating to contamination.</p> <p>In 2015, a Preliminary Site Investigation (in the context of SEPP55 guideline) by Cardno, included intrusive / subsurface sampling for contaminated soil and found a low risk of contamination. The recommendation was that "screening" excavated soil prior to disposal would be a satisfactory method of managing any contaminating material. Thus, the changes to the basement design outlined in Mod2022/0070 are unlikely to impact this conclusion because the overall excavation volume and location is 'substantially the same'.</p> <p>However, it should be noted that our review revealed no conditions relating to contamination management in the consent document N0440/15, nothing requiring works to comply with the recommendations in the Preliminary Site Investigation, and no reference to that investigation. This may be because contamination management forms part of the Waste Management Plan mentioned in consent item D7, we have not sighted this plan. The planner may want to seek clarification -that works will be in compliance with recommendations (in the "Conclusion" section) made in the 2015 Cardno Preliminary Site Investigation.</p> <p>Overall, Environmental Health are satisfied that contamination is low risk for this development, the proposed modifications do not impact previous findings, nor any conditions of consent document N0440/15.</p> <p><u>Planner comment:</u> The basement excavation approved has already been substantially commenced and the scope of basement extension proposed is minimal. There is no evidence to suggest that works have not been done contrary to the PSI, notwithstanding the fact that it has not been endorsed by a condition of consent. The changes sought under this modification application are not of a magnitude that would warrant imposition of new contamination requirements.</p>
<p>Environmental Health (Industrial)</p>	<p><b><i>Supported, with conditions</i></b></p> <p><i>Revised comments - 30/05/22</i></p> <p>The revised Acoustic Report submitted by Acoustic Logic satisfactorily demonstrates that the proposed air-conditioning units atop of the building will not generate any unreasonable acoustic impacts on the subject or surrounding properties. The proposal is therefore supported.</p> <p><i>Previous comments - 31/3/22</i></p> <p>The application also seeks to locate integrated and appropriately screened air-conditioning condenser units on the roof of the approved residential flat buildings where they will not be visible from a public</p>

Internal Referral Body	Comments
	<p>place and not give rise to any adverse residential amenity impacts in terms of noise.</p> <p>Proposed modifications to consent document N0440/15 relating to health amenity criteria are limited to noise impacts from rooftop air conditioning units. We noted a request to delete condition B28 - relating to the addition and allowance of rooftop air conditioning units, which would allow noise and vibration source to be centralised. The addition of mechanical plant, externally, on the rooftop requires the analysis and support of an acoustic report to ensure that noise and vibration can be mitigated both by design and application. No acoustic report has been provided.</p>
Landscape Officer	<p><b>Supported, without conditions</b></p> <p>The application to modify development consent N0440/15 as approved under Land and Environment Court Proceedings No 10083 of 2016, as described in the Statement of Environmental Effects proposes the refinement in the design and internal layout of the approved apartments and the reintroduction of the originally approved loft floor space associated with townhouses 1 - 14 which were deleted pursuant to a previous modification application.</p> <p>It is also noted in the Statement of Environmental Effects that the Landscape Plans are modified to reflect the altered basement layout and ensure that the overall landscape outcome for the site is not compromised as a consequence of the modifications sought.</p> <p>The application seeks the modification of the following conditions:</p> <ul style="list-style-type: none"> <li>• Condition A1(a) is to be modified to reflect the modified plans and consultant reports prepared in support of this application.</li> <li>• Condition B28 is to be deleted to facilitate the placement of the A/C condensers on the roof of buildings A, B, C and D.</li> <li>• Condition B67 is to be modified to reflect the modified dwelling mix.</li> </ul> <p>Following review of the amended Landscape Plans L-01 issue I, L-02 issue I, L-03 issue I, L-04 issue I, L-05 issue I Landscape Referral raise no concerns as the modified Landscape Plans do not alter the landscape outcomes of the development consent.</p> <p>Condition A1(a) shall identify the amended Landscape Plans under this modification.</p>
NECC (Bushland and Biodiversity)	<p><b>Supported, with conditions</b></p> <p>The proposed modification has been assessed against the following applicable biodiversity-related controls:</p> <ul style="list-style-type: none"> <li>• Pittwater LEP Clause 7.6 - Biodiversity Protection</li> <li>• Pittwater DCP Clause B4.18 - Heathland/Woodland Vegetation</li> </ul> <p>These biodiversity referral comments have considered the plans and documentation submitted in support of the application, including:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• Ecological Matters Letter - Anderson Environment &amp; Planning (22 December 2021)</li> <li>• Response to Request for Addition Information for Ecological Matters Letter - Anderson Environment &amp; Planning, 25 February 2022</li> </ul> <p>The proposed modifications to the existing consent include changes to townhouse facade materials, addition of loft levels to townhouses, and minor modifications to floor plan designs. The letter by Anderson Environment &amp; Planning dated 25 February 2022 states that "these changes do not increase the impact to native vegetation" and "will not affect ecological requirements".</p>
NECC (Development Engineering)	<p><b>Supported, without conditions</b> No objections to approval.</p>
NECC (Riparian Lands and Creeks)	<p><b>Supported, without conditions</b> No objection to the proposed modification.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p><b>Supported, without conditions</b> No objections to approval.</p>
NECC (Water Management)	<p><b>Supported, without conditions</b> No objection to the proposed modification.</p>
Parks, reserves, beaches, foreshore	<p><b>Supported, without conditions</b> The application to modify development consent N0440/15 as approved under Land and Environment Court Proceedings No 10083 of 2016, as described in the Statement of Environmental Effects proposes the refinement in the design and internal layout of the approved apartments and the reintroduction of the originally approved loft floor space associated with townhouses 1 - 14 which were deleted pursuant to a previous modification application.</p> <p>The modification proposal does not alter the public creekline corridor outcome and as such no concerns are raised by Parks Reserves and Foreshores Referral team.</p>
Road Reserve	<p><b>Supported, without conditions</b> There is limited impact on existing road infrastructure assets and the modification does not appear to impact proposed subdivision layout. Development Engineering to review and confirm proposed new infrastructure is acceptable to Council.</p>
Strategic and Place Planning	<p><b>Supported, without conditions</b> N0440/15 was approved by the Land and Environment Court on 3 May 2017 for the subdivision of land and the construction of a residential development incorporating 81 dwellings and associated civil works and landscaping. This application has been subsequently modified on a number of occasions.</p> <p>The Statement of Environmental Effects (SEE) submitted with MOD2022/0070 indicates that this modification application is seeking:</p>



Internal Referral Body	Comments								
	<ul style="list-style-type: none"> <li>• <i>“a refinement in the design and internal layout of approved apartments ...</i></li> <li>• <i>reintroduction of the originally approved loft floor space associated with townhouses 1 -14 ...</i></li> <li>• <i>change in apartment mix with a number of 1 bedroom apartments modified to incorporate 2 bedrooms and the larger 2 bedroom apartments modified to incorporate 3 bedrooms to reflect market demand...</i></li> <li>• <i>minor changes proposed to the external detailing of the residential flat buildings and townhouses to accommodate the floor plan modifications ...</i></li> <li>• <i>locate integrated and appropriately screened air-conditioning condenser units on the roof of the residential flat building...</i></li> <li>• <i>the basement layout is also amended to improve circulation efficiencies and enhance buildability...</i>”</li> </ul> <p>The Warriewood Valley Contributions Plan (2018) Amendment 16 Revision 3 is the applicable Contributions Plan on the land at 8 Forest Road, Warriewood. For residential development, the plan levies for additional lots/dwellings only.</p> <p>MOD2022/0070 does not seek a change to the number of additional lots/dwellings, or a change to the creek land to be dedicated to Council. Therefore, this modification application will not require changes to the approved development contribution condition (Condition C9).</p>								
Strategic and Place Planning (Heritage Officer)	<p><b>Supported, without conditions</b></p> <p>The site accommodates a a large single storey bungalow style building that is the former farmhouse for the property and is likely to have been constructed in the early 20th century. It is located at the western end of the property on a benched and elevated terrace. This terrace is constructed from sandstone blocks likely quarried from the site which have then been placed above a natural rock outcrop. The building is known as Oaklands. Oaklands is not heritage listed.</p> <p>The proposal seeks consent for modifications to an approved application. The changes include reconfiguration of the units and townhouses, changes in the external facades, the basement car park, excavation, landscaping and servicing equipment. There is however no changes to Oaklands proposed and it is be retained on site. As the proposed changes relate to other aspects of the site, and the changes within the vicinity of Oaklands are relatively minor (Buildings C and D), there is considered to be no impact to Oaklands or its significance.</p>								
Traffic Engineer	<p><b>Supported, with conditions</b></p> <p>The proposal to convert some of the approved apartments to change the dwelling:</p> <table border="1" data-bbox="528 2024 1107 2101"> <thead> <tr> <th>Apartment type</th> <th>Approved</th> <th>Proposed</th> <th>Change</th> </tr> </thead> <tbody> <tr> <td>1 Bedroom</td> <td>8</td> <td>1</td> <td>-7</td> </tr> </tbody> </table>	Apartment type	Approved	Proposed	Change	1 Bedroom	8	1	-7
Apartment type	Approved	Proposed	Change						
1 Bedroom	8	1	-7						

Internal Referral Body	Comments
	<p>2 Bedroom      8            17            +9</p> <p>3 Bedroom      49           34           -15</p> <p>4 Bedroom      1            14           +13</p> <p>This change presents no increase to the overall number of parking spaces required under the Pittwater DCP.</p> <p>The modification is supported subject to the conditions provided.</p> <p><u>Planner comment:</u> The traffic engineers have recommended several conditions which are new to the scheme as a whole, have already been imposed on the parent consent, or are updated conditions from those already imposed on the parent consent.</p> <p>From the recommended conditions there are three revisions that would be required under the recommendations of this report, including:</p> <ul style="list-style-type: none"> <li>• existing Condition (C8) Construction Traffic Management Plan <i>To be updated to better reflect Council's requirements</i></li> <li>• existing Condition (B21) Visitor Parking <i>To be updated to include that the visitor parking spaces are to be accessible at all times</i></li> <li>• add new Condition Parking Enclosure to read: <i>With the exception of the townhouses garages as shown on the approved plans, no parking spaces, or access thereto, shall be constrained or enclosed by any form of structure such as fencing, cages, walls, storage space, or the like, without prior consent from Council.</i></li> </ul>
Waste Officer	<b>Supported, without conditions</b>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<b>Supported, without conditions</b>
NSW Rural Fire Service – local branch (s4.14 EPAA)	<p><b>Supported, without conditions</b></p> <p>This response is to be deemed a Bush Fire Safety Authority as required under section 100B of the Rural Fires Act 1997.</p> <p>The NSW Rural Fire Service has reviewed the provided information and raises no objections to the proposed modifications, subject to compliance with the previous Bush Fire Safety Authority dated 21 January 2022.</p>
Aboriginal Heritage Office	<p><b>Supported, subject to recommendations in Due Diligence Report</b> (note: the recommendations were adopted under Condition A1C of MOD2021/0816).</p> <p><i>An Aboriginal Heritage Due Diligence Report was written by</i></p>

External Referral Body	Comments
	<p><i>Futurepast – Heritage Consulting Pty Ltd in October 2015. The recommendations made in the report are:</i></p> <p><b>Recommendation 1</b></p> <p><i>All relevant staff and contractors should be made aware of their statutory obligations for heritage under NSW National Parks and Wildlife Act 1974 and the NSW Heritage Act 1977, which may be implemented as a heritage induction. Recognition should be made of the views and advice that has been provided by the project by the Metropolitan LALC that have been consulted with for the project.</i></p> <p><b>Recommendation 2</b></p> <p><i>As advised by the Metropolitan LALC representative must be on site to monitor the ground disturbing works related to the removal of refuse on site (in particular the various rubbish mounds scattered throughout the site). In addition, a Metropolitan LALC representative must be on site to monitor the clearance of 0.1ha of vegetation to the south for the fire access pathway. During all other times, a stop work protocol should be implemented as outlined in Recommendation 3.</i></p> <p><b>Recommendation 3</b></p> <p><i>In the unexpected circumstances that any Aboriginal objects are unearthed as a result of the proposed site works, it is recommended that activities should temporarily cease and the area be cordoned off. The Office of Environment and Heritage must be notified by ringing the Enviroline 131 555 to advise on the appropriate course of action to allow the MLALC to record and collect the identified item(s).</i></p> <p><b>Recommendation 4</b></p> <p><i>In the event that skeletal remain are uncovered, work must stop immediately in that area and the area be cordoned off. The client must contact the NSW Police and take no further action until written advice is provided by the Police. If the remains are determined to be of Aboriginal origin, Heritage NSW (formally the Office of Environment and Heritage) must be notified by ringing the Enviroline 131 555 and a management plan must be developed in consultation with the relevant Aboriginal stakeholders prior to recommencement of works.</i></p>

External Referral Body	Comments
	<p><b>Recommendation 5</b></p> <p><i>If, during the course of development works, suspected historic heritage places or items are uncovered, work should cease in that area immediately. The Heritage Branch, Heritage NSW (formally the Office of Environment and Heritage) should be notified and works recommenced only when an approved management strategy developed and the relevant permits are in place.</i></p>
NSW Roads and Maritime Services (Traffic Generating Development)	<p><b>Supported, without conditions</b></p> <p><i>Reference is made to Council's referral dated 14 April 2022, regarding the abovementioned application which was referred to Transport for NSW (TfNSW) in accordance with clause C.2 121 of State Environmental Planning Policy (Transport &amp; Infrastructure) 2021. TfNSW has reviewed the proposed modifications and raises no objection to the application as it is unlikely to have a significant impact on the adjacent the classified road network.</i></p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

### SEPP 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
- (iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level

- (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the erection of four residential flat buildings and one block of terrace dwellings atop a level of basement car parking for the provisions of 81 self-contained dwellings.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

## DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed Design Review Panel, rather a Design and Sustainability Advisory Panel, and their recommendations are addressed elsewhere in this report.

## DESIGN QUALITY PRINCIPLES

### Principle 1: Context and Neighbourhood Character

***Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.***

***Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.***

#### Comment:

The proposed modifications maintain consistency with the general character of the neighbourhood, being one dominated by landscaping. The modifications do not materially deviate from the parent DA's assessment against Principle 1.

## Principle 2: Built Form and Scale

**Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.**

**Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.**

### Comment:

The proposed modifications re-instate the scale and proportions of the building, as originally approved, by way of reintroducing the upper loft floor to the town houses. The modifications do not materially change the scale, bulk and height of the development and the buildings therefore remain compatible with Principle 2.

## Principle 3: Density

**Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.**

**Appropriate densities are consistent with the area's existing or projected population.**

**Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.**

### Comment:

The modifications result in an increase to the number of bedrooms on the site from 175 to 188, however that increase is considered minor commensurate to the overall development and does not give rise to any adverse impacts. Therefore Principle 3 is achieved.

## Principle 4: Sustainability

**Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.**

### Comment:

The proposed modifications do not materially change the sustainability credentials of the development.

## Principle 5: Landscape

**Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.**

**Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil**

***management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.***

Comment:

The approved landscape plan and planting schedule is not subject to any significant changes under this modification application. Generally, the works remain consistent with Principle 5. A revised landscape plan has been provided to accompany this application.

**Principle 6: Amenity**

***Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.***

***Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.***

Comment:

The modifications seek to rationalise the internal and external layouts of all apartments to provide an enhanced amenity for future occupants, without compromising on the appearance of the building. The amenity remains appropriate.

**Principle 7: Safety**

***Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.***

***A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.***

Comment:

The development maintains an appropriate degree of safety.

**Principle 8: Housing Diversity and Social Interaction**

***Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.***

***Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.***

Comment:

The proposal does change the diversity of housing by reducing the quantum of one bedroom units on the site, however in this particular location this change is considered acceptable and is consistent with surrounding developments. The applicant contends the change is required to meet current market demands.

**Principle 9: Aesthetics**

***Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.***

***The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.***

Comment:

The development as modified retains the massing of the approved development, but refines the facade detailing to provide both an enhanced internal layout, and to generally improve the aesthetic of the building.

**APARTMENT DESIGN GUIDE**

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

<b>Development Control</b>	<b>Criteria / Guideline</b>	<b>Comments</b>
<b>Part 3 Siting the Development</b>		
<b>Site Analysis</b>	Does the development relate well to its context and is it sited appropriately?	<b>Consistent</b> The development does not materially alter the footprints or height of the approved building, but does refine / enhance the external appearance of the building.  In this respect the development's response to a site analysis does not change from the already approved DA.
<b>Orientation</b>	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<b>No changes from approved development</b>
<b>Public Domain Interface</b>	Does the development transition well between the private and public domain without compromising safety and security?  Is the amenity of the public domain retained and enhanced?	<b>No changes from approved development</b>



<p><b>Communal and Public Open Space</b></p>	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> <li>Communal open space has a minimum area equal to 25% of the site</li> <li>Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)</li> </ol>	<p><b>No changes from approved development</b></p>															
<p><b>Deep Soil Zones</b></p>	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1" data-bbox="440 734 1062 1279"> <thead> <tr> <th>Site area</th> <th>Minimum dimensions</th> <th>Deep soil zone (% of site area)</th> </tr> </thead> <tbody> <tr> <td>Less than 650m<sup>2</sup></td> <td>-</td> <td>7%</td> </tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td> <td>3m</td> <td></td> </tr> <tr> <td>Greater than 1,500m<sup>2</sup></td> <td>6m</td> <td></td> </tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td> <td>6m</td> <td></td> </tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m		Greater than 1,500m <sup>2</sup>	6m		Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m		<p><b>No changes from approved development</b></p> <p>The site retains a deep soil zone of approximately 60% of the site.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)															
Less than 650m <sup>2</sup>	-	7%															
650m <sup>2</sup> – 1,500m <sup>2</sup>	3m																
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Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m																
<p><b>Visual Privacy</b></p>	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" data-bbox="440 1464 1062 1821"> <thead> <tr> <th>Building height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>Over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table> <p><b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p><b>No changes from approved development</b></p> <p>The development maintains appropriate spatial separation between buildings and windows. It is acknowledged that there are some windows within the apartment blocks that are within 6m of one another, however these windows are offset from each-other; are not the primary outlook from the apartments; and could be easily screened in future without compromising the internal amenity of the apartment, or the appearance of the building, should a future occupant wish to do so.</p>			
Building height	Habitable rooms and balconies	Non-habitable rooms															
Up to 12m (4 storeys)	6m	3m															
Up to 25m (5-8 storeys)	9m	4.5m															
Over 25m (9+ storeys)	12m	6m															

<b>Pedestrian Access and entries</b>	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<b>Consistent</b>
<b>Vehicle Access</b>	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<b>No changes from approved development</b>
<b>Bicycle and Car Parking</b>	<p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>• On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>• On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<b>Consistent</b>
<b>Part 4 Designing the Building</b>		
<b>Amenity</b>		
<b>Solar and Daylight Access</b>	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> <li>• Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.</li> </ul>	<b>Consistent</b>
	<ul style="list-style-type: none"> <li>• A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</li> </ul>	<b>Consistent</b>
<b>Natural Ventilation</b>	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p>	<b>Consistent</b>

	<ul style="list-style-type: none"> <li>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</li> </ul>													
	<ul style="list-style-type: none"> <li>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</li> </ul>	<b>Consistent</b>												
<b>Ceiling Heights</b>	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1" data-bbox="440 779 1061 1361"> <thead> <tr> <th colspan="2">Minimum ceiling height</th> </tr> </thead> <tbody> <tr> <td>Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>For 2 storey apartments</td> <td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td> </tr> <tr> <td>Attic spaces</td> <td>1.8m at edge of room with a 30 degree minimum ceiling slope</td> </tr> <tr> <td>If located in mixed used areas</td> <td>3.3m for ground and first floor to promote future flexibility of use areas</td> </tr> </tbody> </table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use areas	<p><b>Consistent</b></p> <p>All apartments / townhouses achieve a satisfactory floor to ceiling height.</p>
Minimum ceiling height														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope													
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use areas													
<b>Apartment Size and Layout</b>	<p>Apartments are required to have the following minimum internal areas:</p> <table border="1" data-bbox="440 1518 1061 1742"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>35m<sup>2</sup></td> </tr> <tr> <td>1 bedroom</td> <td>50m<sup>2</sup></td> </tr> <tr> <td>2 bedroom</td> <td>70m<sup>2</sup></td> </tr> <tr> <td>3 bedroom</td> <td>90m<sup>2</sup></td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>	Apartment type	Minimum internal area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<p><b>Consistent</b></p> <p>All apartments / townhouses achieve an internal floor area in excess of the minimum dimensions.</p>		
Apartment type	Minimum internal area													
Studio	35m <sup>2</sup>													
1 bedroom	50m <sup>2</sup>													
2 bedroom	70m <sup>2</sup>													
3 bedroom	90m <sup>2</sup>													
	<p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room.</p>	<b>Consistent</b>												

	Daylight and air may not be borrowed from other rooms.																
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	<b>Consistent</b>															
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	<b>Consistent</b>															
	Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space).	<b>Consistent</b>															
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	<b>Consistent</b>															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> <li>• 3.6m for studio and 1 bedroom apartments</li> <li>• 4m for 2 and 3 bedroom apartments</li> </ul>	<b>Consistent</b>															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	<b>Consistent</b>															
<b>Private Open Space and Balconies</b>	<p>All apartments are required to have primary balconies as follows:</p> <table border="1" data-bbox="438 1220 1061 1478"> <thead> <tr> <th>Dwelling Type</th> <th>Minimum Area</th> <th>Minimum Depth</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m<sup>2</sup></td> <td>-</td> </tr> <tr> <td>1 bedroom apartments</td> <td>8m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>2 bedroom apartments</td> <td>10m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m<sup>2</sup></td> <td>2.4m</td> </tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m <sup>2</sup>	-	1 bedroom apartments	8m <sup>2</sup>	2m	2 bedroom apartments	10m <sup>2</sup>	2m	3+ bedroom apartments	12m <sup>2</sup>	2.4m	<p><b>Consistent</b></p> <p>All apartments / townhouses achieve a primary open space (in the form of a balcony, terrace or garden) in excess of the minimum requirements.</p>
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m <sup>2</sup>	-															
1 bedroom apartments	8m <sup>2</sup>	2m															
2 bedroom apartments	10m <sup>2</sup>	2m															
3+ bedroom apartments	12m <sup>2</sup>	2.4m															
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m.	<p><b>Consistent</b></p> <p>Ground floor apartments / townhouses benefit from a terrace / alfresco area in addition to private gardens.</p>															
<b>Common Circulation and Spaces</b>	The maximum number of apartments off a circulation core on a single level is eight.	<b>No changes from approved development</b>															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	<b>N/A</b>															
<b>Storage</b>	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	<b>No changes from approved development</b>															

	<b>Dwelling Type</b>	<b>Storage size volume</b>	
	Studio apartments	4m <sup>2</sup>	
	1 bedroom apartments	6m <sup>2</sup>	
	2 bedroom apartments	8m <sup>2</sup>	
	3+ bedroom apartments	10m <sup>2</sup>	
	At least 50% of the required storage is to be located within the apartment.		
<b>Acoustic Privacy</b>	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.		<b>No changes from approved development</b>
<b>Noise and Pollution</b>	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.		<b>No changes from approved development</b>
<b>Configuration</b>			
<b>Apartment Mix</b>	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.		<p><b>Consistent</b></p> <p>The modifications seek to alter the approved apartment mix by changing 7 apartments from one to two bedrooms, and 6 apartments from two to three bedrooms.</p> <p>Overall the proposal provides:            1 x 1 bedroom apartment            9 x 2 bedroom apartment            55 x 3 bedroom apartment            1 x 4 bedroom apartment</p> <p>The provision of larger apartments (as opposed to studio or one bedroom apartments) is stated (by the applicant) to be better suited to the Warriewood Valley market. The apartments are all well proportioned and achieve an acceptable level of amenity.</p> <p>Council finds that the</p>

		revised apartment mix is acceptable in this circumstance.
<b>Ground Floor Apartments</b>	Do the ground floor apartments deliver amenity and safety for their residents?	<b>No changes from approved development</b>
<b>Facades</b>	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	<p><b>Consistent</b></p> <p>The modifications seek to refine the approved facades by way of increased modulation and articulation, and by adding further changes to the composition of facade materials.</p> <p>The modifications sought remain consistent with the intent and character of the original consent and surrounding area, but appear as an enhanced architectural outcome.</p>
<b>Roof Design</b>	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	<p><b>Consistent</b></p> <p>The approved and proposed design includes no rooftop photovoltaic systems, or communal open spaces. In this location having a trafficable roof is not seen as a desirable outcome, however there is no impediment to providing a PV system on the roof.</p> <p>However, the proposal achieves the requirements of BASIX without PV, and the parent consent did not require such. Therefore the roof design, with no PV or communal open space, is accepted.</p>
<b>Landscape Design</b>	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	<b>Consistent</b>
<b>Planting on Structures</b>	When planting on structures the following are recommended as minimum standards for a range of plant sizes:	<b>No changes from approved development</b>

Plant type	Definition	Soil Volume	Soil Depth	Soil Area
Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent
Medium Trees	8-12m high, up to 8m crown spread at maturity	35m <sup>3</sup>	1,000mm	6m x 6m or equivalent
Small trees	6-8m high, up to 4m crown spread at maturity	9m <sup>3</sup>	800mm	3.5m x 3.5m or equivalent
Shrubs			500-600mm	
Ground Cover			300-450mm	
Turf			200mm	
<b>Universal Design</b>	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features			<b>No changes from approved development</b>
<b>Adaptable Reuse</b>	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.			<b>N/A</b>
<b>Mixed Use</b>	Can the development be accessed through public transport and does it positively contribute to the public domain?  Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.			<b>N/A</b>
<b>Awnings and Signage</b>	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.  Signage must respond to the existing streetscape character and context.			<b>N/A</b>
<b>Performance</b>				
<b>Energy Efficiency</b>	Have the requirements in the BASIX certificate			<b>Consistent</b>

	been shown in the submitted plans?	
<b>Water Management and Conservation</b>	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	<b>No changes from approved development</b>
<b>Waste Management</b>	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	<b>No changes from approved development</b>
<b>Building Maintenance</b>	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	<b>No changes from approved development</b>

### STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

**Note.** The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment:

The modification application is not recommended for refusal on any of these grounds.

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
- (b) the design criteria specified in subclause (1) are standards to which clause 4.15 (2) of the Act applies.



**Note.** The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment:

This assessment finds that the proposed modifications have given adequate regard to the design quality principles and the objectives of the ADG, and that neither of these form a basis for refusing the application.

**SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 0006938500 and 0006938250). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 669006M\_05).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	35	35

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

**SEPP (Transport and Infrastructure) 2021**

Ausgrid

Section 2.48 of Chapter 2 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 5.0m 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 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections.

Transport for NSW (TfNSW)

The proposal was referred to TfNSW who advised:

*Reference is made to Council's referral dated 14 April 2022, regarding the abovementioned application*

which was referred to Transport for NSW (TfNSW) in accordance with clause C.2 121 of State Environmental Planning Policy (Transport & Infrastructure) 2021.

TfNSW has reviewed the proposed modifications and raises no objection to the application as it is unlikely to have a significant impact on the adjacent the classified road network.

### SEPP (Resilience and Hazards) 2021

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential and agricultural purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

### Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone RU2: Yes Zone R3 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone RU2: Yes Zone R3 : Yes

### Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings	10.5m	10.5m (as amended from 12.4m in original DA, amended through s34 Conciliation Conference)	10.7m	1.9% (0.2m)	No

### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.1 Warriewood Valley Release Area	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes

Clause	Compliance with Requirements
7.10 Essential services	Yes

Detailed Assessment

**4.6 Exceptions to development standards**

Description of non-compliance:

Development standard:	Height of Buildings
Requirement:	10.5m
Approved:	10.5m
Proposed:	10.7m
Percentage variation to requirement:	1.9% (0.2m)

The proposed modifications which alter the approved height of buildings pertains to the lift-overflow / rooftop air conditioning units to approved Building D. These elements project to a maximum height of 10.7m and are shown in white in the below height plane diagram prepared by the project architect:



### **Assessment of Request to Vary a Development Standard**

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the Pittwater LEP, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.56 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.56 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.56 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.56 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the R3 Medium Density Residential zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*.

***Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case***

Comment:

Compliance with the height of buildings development standard is considered unnecessary in this case for the following reasons:

- The proposed variation is non-discernible in contrast to the approved development, and the increase in building height is reasonably negligible (1.9%).
- The proposed variation is not resultant of any increase in density or yield but is rather the outcome of further construction detailing.
- The area of variation is not readily visible from any surrounding properties on adjoining lands or units on the subject site.

***There are sufficient environmental planning grounds to justify contravening the development standard***

Comment:

An assessment of the proposed modification has concluded that there are sufficient environmental planning grounds for the variation:

- The non-compliance does not result in any increased amenity impacts over and above the approved development.
- The non-compliance is not readily visible from any surrounding lands or dwellings.
- The non-compliance is considered minor and is generally non-discernible as an element above the prescribed height limit.
- The non-compliance results in an improved amenity for occupants (air conditioning).

***The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out***

4.3 Height of Buildings

(1) The objectives of this clause are as follows:

*a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

Comment:

The portion of non-compliance attains a maximum height of RL35.7 which is generally compatible

with the height of scale of approved neighbouring buildings (i.e., the adjoining building to the west is approved to be RL36.5). The non-compliance does not detract from the proposals ability to achieve the desired character of the locality.

*b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment:

As described in objective (a) above, the height of the proposal is compatible with the heights of adjoining buildings.

*c) to minimise any overshadowing of neighbouring properties,*

Comment:

The non-compliance proposed does not overshadow neighbouring properties, rather is only overshadows the roof of the subject building itself.

*d) to allow for the reasonable sharing of views,*

Comment:

The non-compliance does not detract from any existing view corridors enjoyed from the public or private domain.

*e) to encourage buildings that are designed to respond sensitively to the natural topography,*

Comment:

The modifications sought in this application, including the increase in building height, does not change the proposals relationship to the natural topography of the land.

*f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items,*

Comment:

The non-compliance does not materially change the bulk, scale or visual impact of the development when viewed from the surrounding environment.

## **Zone Objectives**

The underlying objectives of the R3 Medium Density Residential zone:

- *To provide for the housing needs of the community within a medium density residential environment.*

Comment:

The development provides for new housing. The modifications sought (including the increased building height) does not alter the provision of housing on the site, nor the ability for adjoining sites to be successfully developed to appropriate capacities.

- To provide a variety of housing types within a medium density residential environment.

Comment:

The housing typologies approved on the site (units and townhouses) are not subject to change as a part of this application.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment:

The approved land uses on site are not subject to change as a part of this application.

- To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses

Comment:

No land uses other than housing are proposed on this site, and such uses are considered appropriate on this land.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone.

**Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment**

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Comment:

The subject application is made under Section 4.56 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

**Pittwater 21 Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front Building Line (south, Forest Road)	Articulation zone - 3.0m Garage - 4.5m Building - 4.5m	Approx. 135.0m	No change	Yes
Rear Building Line	(north) 3.0m	Varies - average approx. 48.0m	No change	Yes
Side Building Line	(east) 3.0m	min. 9.0m	No change min. 12.5m to reinstated loft level	Yes Yes

	(west) 3.0m	approx. 52.0m	No change	Yes
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### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.14 Warriewood Locality	N/A	N/A
A4.16 Warriewood Valley Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B4.18 Heathland/Woodland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C6.1 Integrated Water Cycle Management	Yes	Yes
C6.2 Natural Environment and Landscaping Principles	Yes	Yes
C6.3 Ecologically Sustainable Development, Safety and Social	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
Inclusion		
C6.5 Utilities, Services and Infrastructure Provision	Yes	Yes
C6.6 Interface to Warriewood Wetlands or non-residential and commercial/industrial development	Yes	Yes
D16.1 Character as viewed from a public place	Yes	Yes
D16.6 Front building lines	Yes	Yes
D16.7 Side and rear building lines	Yes	Yes
D16.8 Spatial Separation	Yes	Yes
D16.9 Solar access	Yes	Yes
D16.10 Private and Communal Open Space Areas	Yes	Yes
D16.11 Form of construction including retaining walls, terracing and undercroft areas	Yes	Yes
D16.12 Fences	Yes	Yes
D16.13 Building colours and materials	Yes	Yes

#### Detailed Assessment

#### **A4.14 Warriewood Locality**

The subject site encompasses both the 'A4.14 Warriewood Locality' and the 'A4.16 Warriewood Valley Locality'.

No physical works associated with the development are proposed within the A4.14 area and therefore an assessment against that Localities controls is not necessitated.

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

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

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

#### **Warriewood Valley Contributions Plan**

The Warriewood Valley Contributions Plan (2018) Amendment 16 Revision 3 is the applicable Contributions Plan on the land at 8 Forest Road, Warriewood. For residential development, the plan levies for additional lots/dwellings only.

MOD2022/0070 does not seek a change to the number of additional lots/dwellings, or a change to the creek land to be dedicated to Council. Therefore, this modification application will not require changes to the approved development contribution condition (Condition C9).

#### **CONCLUSION**

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

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

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

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

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

The assessment concludes that the works sought under the modification application can suitably be described as being substantially the same development as the parent development consent, and that the magnitude of works sought do not materially result in any impacts to adjoining properties or the environment.

The modifications generally seek to enhance the amenity and livability of the apartments for future occupants without compromising the integrity or quality of the architecture.

On balance, this report concludes with the recommendation that the SNPP, as the consent authority, should **APPROVE** the modification application.

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

## **RECOMMENDATION**

THAT Sydney North Planning Panel as the consent authority grant approval to Modification Application No. Mod2022/0070 for Modification of Development Consent N0440/15 granted for the construction of a residential development, comprising 81 dwellings on land at Lot 1 DP 5055,8 Forest Road, WARRIEWOOD, subject to the conditions outlined in Attachment 1.

## ATTACHMENT 1

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

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

#### a) Modification Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
A001 Rev. 06 - Preliminary Site Plan	11 February 2022	ADS Architects
A099.1 Rev. 05 - Floor Plans - Basement 1 - East	11 February 2022	ADS Architects
A099.2 Rev. 05 - Floor Plans - Basement 1 - West	11 February 2022	ADS Architects
A100.1 Rev. 05 - Floor Plans - Ground Floor Plan - East	11 February 2022	ADS Architects
A100.2 Rev. 05 - Floor Plans - Ground Floor Plan - West	11 February 2022	ADS Architects
A101.1 Rev. 04 - Floor Plans - Level 1 - East	11 February 2022	ADS Architects
A101.2 Rev. 04 - Floor Plans - Level 1 - West	11 February 2022	ADS Architects
A102.1 Rev. 04 - Floor Plans - Level 2 - East	11 February 2022	ADS Architects
A102.2 Rev. 04 - Floor Plans - Level 2 - West	11 February 2022	ADS Architects
A103.1 Rev. 03 - Floor Plans - Roof Level - East	11 February 2022	ADS Architects
A103.2 Rev. 03 - Floor Plans - Roof Level - West	11 February 2022	ADS Architects
A200 Rev. 04 - Sections	11 February 2022	ADS Architects
A300 Rev. 04 - Elevations Building A and B	11 February 2022	ADS Architects
A301 Rev. 04 - Elevations Building C and D	11 February 2022	ADS Architects
A302 Rev. 04 - Elevations Townhouses	11 February 2022	ADS Architects
FF&E Schedule - Pages 1 - 8	9 February 2022	ADS Architects

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BCA Assessment Report (114511-BCA-r3)	7 September 2022	BCA Logic
Report on Geotechnical Assessment (81022041)	17 February 2022	Cardno
Ecological Matters Letter (1377.07)	22 December 2021	AEP
Response to Request for Additional Information for Ecological Matters Letter (1377.08)	25 February 2022	AEP
Rooftop Mechanical Plant Review (20220591.1/3005A/R0/HD)	30 May 2022	Acoustic Logic
Thermal Comfort and BASIX Assessment (Issue. D)	17 December 2021	Efficient Living

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

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

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
L-01 Rev. I - Landscape Master Plan	19 January 2022	Site Design + Studios
L-02 Rev. I - Existing Trees Plan	19 January 2022	Site Design + Studios
L-03 Rev. I - Ground Floor East Landscape Plan	19 January 2022	Site Design + Studios
L-04 Rev. I - Ground Floor West Landscape Plan	19 January 2022	Site Design + Studios
L-05 Rev. I - Riparian Planting	19 January 2022	Site Design + Studios
L-06 Rev. I - Sections	19 January 2022	Site Design + Studios
L-07 Rev. I - Sections	19 January 2022	Site Design + Studios
L-08 Rev. I - Sections	19 January 2022	Site Design + Studios
L-09 Rev. I - Typical Details and Notes	19 January 2022	Site Design + Studios

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

**B. Modify Condition B21 - Visitor Parking to read as follows:**

The visitor parking is to be accessible at all times, and a sign post erected at the vehicular entry point(s) of the development indicating the location of the visitor parking.

Reason: To ensure visitors are not forced to park on public streets when visitor parking has been provided and is available within the development.

**C. Delete Condition B28 - Rooftop Mechanical Systems.**

**D. Add Condition B45.1 - Maintenance of Asset Protection Zones to read as follows:**

Vegetation clearing for ongoing APZ maintenance must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Reason: To protect native vegetation and wildlife.

**E. Modify Condition B67 - Apartment Mix to read as follows:**

The residential flat building must comprise of the following unit mix:

- a. 1 x 1 bedroom apartment
- b. 9 x 2 bedroom apartments
- c. 55 x 3 bedroom apartments
- d. 1 x 4 bedroom apartment

(note: the above does not include the approved townhouses).

Reason: To ensure the development density is in accordance with the approved plans.

**F. Add Condition B73 - Parking Enclosure to read as follows:**

With the exception of the parking cages / garages beneath the townhouses as shown on the approved plans, no parking spaces or access thereto shall be constrained or enclosed by any form of structure (including fencing, cages, walls, storage space or the like) without the prior consent of Council.

Reason: To ensure accessibility is maintained.

**G. Modify Condition C8 - Construction Traffic Management Plan to read as follows:**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of the relevant Construction Certificate.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction

activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site

- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

#### **H. Add Condition D21 - Staff and Contractor Parking to read as follows:**

The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All staff and contractors are to use the basement parking once available. All necessary facilities are to be provided to accommodate this requirement, including lighting in the basement, security cameras etc.

Reason: To ensure minimum impact of construction activity on the local parking network.

#### **I. Add Condition E22 - Acoustic Review to read as follows:**

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 Occupation Certificate.

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

#### **J. Add Condition E23 - Clearing for Asset Protection Zones - Project Ecologist to Certify**

Clearing of vegetation for APZ establishment must only occur within the surveyed and permanently marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To protect native vegetation and wildlife.