

17<sup>th</sup> August 2022

The General Manager  
Northern Beaches Council  
PO Box 82  
Manly NSW 1655

Dear Sir,

**Statement of Environmental Effects  
Modification of Land and Environment Court Issued Consent DA2019/0154  
Proceedings 2019/00199786  
Demolition works and construction of a seniors housing development  
1955 Pittwater Road, Bayview**

**1.0 Introduction**

On 28<sup>th</sup> July 2020 the Land and Environment Court of New South Wales (the Court) granted development consent (Proceedings 2019/00199786) for demolition works and construction of a senior's housing development by way of section 34 agreement (DA2019/0154).

This consent has been modified on several occasions (Mod2021/0101 and Mod2021/0343) pursuant to section 4.56 of the Environmental Planning and Assessment Act 1979 (the Act). The approved modifications included the relocation of piling and retaining walls and the utilisation of the created void areas for non-habitable storage purposes.

We have been engaged to prepare an application to again modify the consent pursuant to Section 4.56 of the Act which enables the Council to modify a Court grant consent. Specifically, the modifications provide for a general refinement in the detailing of the approved development in terms of balcony design, materials/ finishes and buildability and also seeks to address issues identified in the preparation of the final Construction Certificate documentation in relation to BCA compliance, fire services design and location, mechanical services/condenser location and compliance with the Apartment Design Guide (ADG) in relation to minimum floor to floor heights/buildability.

The proposed modifications necessitate a rationalisation of floor levels and overall building height with the New South Wales Fire Brigade requirements in relation to the design and location of the required fire hydrant booster assembly unfortunately necessitating the removal of an additional tree (Tree 3) located within the road reserve. Such additional tree loss is compensated for through the implementation of the enhanced site landscape regime which includes the provision of 26 additional trees on the site as detailed within the accompanying arborist report and on the accompanying landscape plans.

The modifications to the design and detailing of the development will enhance the overall design quality of the development and its contribution to the streetscape with the integrated landscape regime ensuring that the development will sit within a landscaped setting. Importantly this submission demonstrates that the heritage conservation, landscape, drainage and residential amenity outcomes afforded through approval of the original application including visual privacy, solar access and view sharing are not compromised.

To that extent Council can be satisfied that the development as modified represents substantially the same development as originally approved and accordingly is appropriately dealt with by way of Section 4.56 of the Act.

## **2.0 Detail of Modifications Sought**

The proposed modifications are detailed on the following amended/additional plans and documentation:

- Architectural plans DA.000, DA001(A), DA100(A), DA101(A), DA201(A) to DA205(A), DA301(A), DA302(A), DA401(A) to DA404(A), DA501(A), DA502(A), DA701(A), DA801(A) and DA802(A) prepared by A+ Design Group,
- Landscape plans 000(B), 101(B), 201(B) and 501(A) prepared by Site Image Landscape Architects,
- Arborist Report, dated August 2022, prepared by Waratah Eco Works,
- Email confirming Booster Assembly Locational Requirements (FRNSW), dated 11<sup>th</sup> August 2022, prepared by Ben Hamilton – Director - Innova Services Australia Pty Limited, and
- Updated NatHERS and BASIX Certificate prepared by Efficient Living.

## **Architectural modifications**

The proposed architectural modifications are shown clouded on the accompanying plans prepared by A+ Design Group and can be summarised as follows:

**1. Entry Pedestrian Ramp** - Increased pedestrian ramp width to 1600mm for accessibility

**2. Building Entry** – New awning and vertical louvre screen to increase sense of entry.

**3. Balcony Articulation** – New curved balconies for improved aesthetics. Increase in outdoor private open space area and solar access for improved amenity

**4. Fencing** – New fencing to provide safety and security

**5. Roof** – New rooftop plant enclosure to comply with services requirements

**6. Landscaping** - New landscape buffer around perimeter of First Floor roof deck to soften built form

**7. Roof & Floor RL** – Adjustment in floor-to-floor heights to reflect structural and building services requirements.

**8. Vehicular Access** - Design development to comply with accessibility & Australian Standards.

**9. FRNSW Requirement** to provide hardstand & fire booster, requiring removal of tree T3 (Refer to Arborist Report).

In relation to the modifications proposed to address the issues identified in the preparation of the final Construction Certificate documentation relating to BCA compliance, fire services design and location, mechanical services (lift pit and overrun), condenser location and compliance with the Apartment Design Guide (ADG) in relation to minimum floor to floor heights/buildability we provide the following building height/ RL comparison table:

	Approved RL	Modified RL	Change/ Comment
Lift Pit	-	2.84	The required lift pit was not nominated on the approved drawings
Carpark Level	7.00	6.38	A 620mm reduction in floor level. This modification provides for an easing of the previously approved driveway gradient
Lower Ground Floor level	9.70	9.550	A 150mm reduction in floor level
Ground Floor Level	12.6	12.784	A 184mm increase in floor level
First Floor Level	15.5	15.973	A 473mm increase in floor level
Roof Parapet	18.48	19.673	A 1.193mm increase in level
Top of lift overrun/ condenser screen	-	20.302	The approved plans do not nominate a lift overrun or roof mounted condenser units

In relation to the design and location of the required fire hydrant booster assembly, and the associated necessity to remove T3 from within the road reserve we rely on the accompanying arborist report prepared by Waratah Eco Works and the email at Figure 1 over page confirming the Booster Assembly Locational Requirements (FRNSW), dated 11<sup>th</sup> August 2022, prepared by Ben Hamilton – Director - Innova Services Australia Pty Limited.

We confirm that the previously approved stormwater and waste management regimes are not altered as a consequence of the modifications sought.

**From:** [Ben Hamilton](#)  
**To:** [Joshua Constantine](#)  
**Subject:** Booster Assembly - 1955 Pittwater Rd Bayview  
**Date:** Thursday, 11 August 2022 10:50:50 AM

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Hi Josh

In order to comply with BCA Clause E1.3 the fire hydrant system must be installed in accordance with AS 2419.1. The most recent published AS 2419.1-2021 requires that the booster assembly inlets and outlets face the designated hardstand, being the road. The driveway is not a suitable hardstand and does not meet FRNSW operational requirements. This has been made clear on a number of projects both during consultation phases and at final inspections.

The Standard further requires that a clear working space of not less than 1.5m be provided in front of the booster assembly and that clear access be available from the hardstand to the booster assembly.

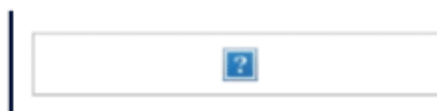
FRNSW considers landscaping and vegetation between the hardstand and booster assembly to be an obstruction and would likely raise this as a defect during a final OC inspection.

Kind regards

**Ben Hamilton**  
Director  
Innova Services Australia Pty Ltd  
0431 275 107

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**Figure 1** – Email confirmation in relation to the Booster Assembly Locational Requirements (FRNSW), dated 11<sup>th</sup> August 2022, prepared by Ben Hamilton – Director - Innova Services Australia Pty Limited

## Landscape modifications

The New South Wales Fire Brigade requirements in relation to the design and location of the required fire hydrant booster assembly necessitate the removal of an additional tree (Tree 3) located within the road reserve. In this regard, the accompanying arborist report prepared by Waratah Eco Works contains the following commentary:

*The tree is located on the council verge in front of a current development/construction site. Our client has taken over the site from another developer and has needed to change the original design. The hardstand for the fire hydrant will need to be located on the road verge in front of the property as the driveway is not a suitable location. Under the FRNSW and AS 2419.1-2021 requirements for a hardstand, the proposed new placement on the road verge is deemed a suitable location. Clause 7.3.3 of AS 2419.1-2021 requires that the fire hydrant outlets and fire brigade booster connection inlets face the hardstand. Given these requirements the tree on the council verge will be severely impacted upon with further excavation required for the hardstand and hydrant access.*

The arborist report contains the following recommendations:

## 5 Recommendations

Given the information provided by the client, there will be further impact on primary, secondary and feeder roots in order to meet FRNSW requirements for the hardstand and hydrant access. It is likely that the tree's stability will be compromised and therefore it is recommended that the tree be removed and replaced by a ratio of 9:1 with locally endemic species (see list below). We recommend that a condition of removal be that the tree is replaced by a minimum of four *Corymbia maculata* as well as a minimum of five species from the list below.

## 6 Appendix

### Recommended replacement species

Trees
<i>Eleocarpus reticulatus</i>
<i>Backhousia myrtifolia</i>
<i>Achronichia oblongifolia</i>
<i>Banksia integrifolia</i>
<i>Acmena smithii</i>
<i>Banksia serrata</i>
<i>Allocasuarina littoralis</i>
<i>Allocasuarina torulosa</i>

This regard, the accompanying landscape plans prepared by site Image Landscape Architects provide for a total of 26 additional trees on the subject site which will ensure that the required tree loss is appropriately compensated for such that the building will sit within a landscaped setting.

### **Conditional modifications**

The application also seeks the modification of the following conditions of consent:

Condition 1 - This condition is to be modified to reflect the modified plans and supporting documentation.

Condition 21 - This condition is to be modified to refer to the modified schedule of materials and finishes plans DA801(A) and DA802(A).

Condition 46 - This condition is to be modified to include the removal of Tree 3 – *Corymbia maculata* from within the road reserve.

Condition 49 - This condition is to be modified to reflect the removal of Tree 3.

Condition 56 - This condition is to be modified to reference the modified landscape plans the subject of this application.

Condition 57 - This condition is to be modified to reflect the removal of Tree 3.

### 3.0 Section 4.56 of the Environmental Planning and Assessment Act 1979

Section 4.56 of the Act provides that:

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

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



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

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

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

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

When one undertakes the above analysis in respect of the subject application it is clear that the approved development remains, in its modified state, a development which will continue to relate to its surrounds and adjoining development in the same fashion as originally approved in terms of floor space, bulk and scale, view sharing, boundary setbacks, privacy, solar access and landscape outcomes.

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

- The proposed use does not change,
- The external building appearance, envelope and volume as perceived from adjoining properties and the public domain are not materially altered; and
- The modifications maintain the previously approved residential amenity outcomes in terms of views, privacy, visual bulk and overshadowing.

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

## 4.0 Pittwater Local Environmental Plan 2014/ SEPP HSPD/ SEPP Housing

### Zoning and permissibility

The subject property is zoned R2 Low Density Residential pursuant to Pittwater Local Environmental Plan 2014 (PLEP). Whilst seniors housing is prohibited in the zone we note that approval of the original development relied on the permissibility afforded by the now repealed State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPPHSPD). We also note that seniors housing is a permissible land use in the zone pursuant to the recently gazetted State Environmental Planning Policy (Housing) 2021 (SEPP Housing).

The proposed modifications are therefore permissible pursuant to the state planning policies.

### Height of Buildings

Pursuant to Clause 4.3 of PLEP 2014, the height of a building on the subject land is not to exceed 8.5 metres in height. We note that the height standard applicable to seniors housing on the site pursuant to clause 84(2)(c) and (3) of SEPP Housing namely:

- (2) *Development consent must not be granted for development to which this section applies unless –*
  - .....
  - (c) *for development on land in a residential zone where residential flat buildings are not permitted –*
    - (i) *the development will not result in a building with a height of more than 9.5m, excluding servicing equipment on the roof of the building, and*
    - (ii) *if the roof of the building contains servicing equipment resulting in the building having a height of more than 9.5m—the servicing equipment complies with subsection (3), and*
- .....
- (3) *The servicing equipment must –*
  - (a) *be fully integrated into the design of the roof or contained and suitably screened from view from public places, and*
  - (b) *be limited to an area of no more than 20% of the surface area of the roof, and*
  - (c) *not result in the building having a height of more than 11.5m.*

The accompanying plans nominate an overall building height of approximately 8.9 metres above the ground level established across the site at the time of determination of the original application. Such building height includes the proposed roof top mechanical plant and screen structure. Such building heights comply with the development standards contained within the recently gazetted SEPP Housing and to that extent are considered acceptable.

Having regard to the Land and Environment Court of NSW planning principle established in the matter of *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 we have formed the opinion that most observers would not find the proposed building offensive, jarring or unsympathetic to its context or surrounds. The development is compatible with its surrounds and will coexist in harmony with development located within its visual catchment. In forming this opinion, we rely on the photomontage at Figure 2 below



**Figure 2** - Photomontage showing the complimentary and compatible building form as viewed from Pittwater Road

## **5.0 Manly Development Control Plan 2013**

Having assessed the modified development against the applicable provision of PDCP we note the following:

- The siting, scale, form and massing of the development is not significantly altered and certainly not to the extent that the building will be perceived as inappropriate or jarring in a streetscape or broader urban design context as depicted in the photomontage at Figure 2,
- The modified proposal maintains the previously approved setbacks and spatial relationship with adjoining development with the building continuing to sit within a landscaped setting,
- The previously approved off-street carparking, waste management and stormwater drainage regimes are maintained,
- The previously approved building accessibility is not compromised as a consequence of the modifications sought,
- The modified proposal does not compromise the residential amenity outcomes afforded to adjoining development through approval of the original application in relation to views, solar access and privacy, and
- The New South Wales Fire Brigade requirements in relation to the design and location of the required fire hydrant booster assembly unfortunately necessitating the removal of an additional tree (Tree 3) located within the road reserve. Such additional tree loss is compensated for through the implementation of the enhanced site landscape regime which includes the provision of 26 additional trees on the site as detailed within the accompanying arborist report and on the accompanying landscape plans.

## **6.0 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004**

The approved developments performance when assessed against of the provisions of the now repealed State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, which has been replaced by State Environmental Planning Policy (Housing) 2021, is not compromised as consequence of the modifications sought. In this regard we note that the previously approved GFA/FSR, setback and landscaped area outcomes are maintained.

## **7.0 State Environmental Planning Policy (Resilience and Hazards) 2021**

The approved developments performance when assessed against of the provisions of the now repealed State Environmental Planning Policy (Coastal Management) 2018 and State Environmental Planning Policy No. 55 – Remediation of Land, which have both been replaced by State Environmental Planning Policy (Resilience and Hazards) 2021, are not compromised as consequence of the modifications sought.

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

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

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

The modified development responds positively to the relevant provisions of the identified LEP and SEPP's as detailed within this report.

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

### *Context and Setting*

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

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

The modifications to the design and detailing of the development will enhance the overall design quality of the development and its contribution to the streetscape with the integrated landscape regime ensuring that the development will sit within a landscaped setting. Importantly this submission demonstrates that the heritage conservation, landscape, drainage and residential amenity outcomes afforded through approval of the original application including visual privacy, solar access and view sharing are not compromised.

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

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

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

#### *Access, transport and traffic*

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

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

The previously approved off-street car parking circumstances not compromised.

#### *Public domain*

The removal of Tree 3 from within the road reserve is appropriately compensated for through the provision of an additional 26 canopy trees as detailed in the accompanying arborist report and on the accompanying landscape plans.

#### *Economic impact in the locality*

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

#### *Site design and internal design*

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

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

The modifications to the design and detailing of the development will enhance the overall design quality of the development and its contribution to the streetscape with the integrated landscape regime ensuring that the development will sit within a landscaped setting.

Importantly this submission demonstrates that the heritage conservation, landscape, drainage and residential amenity outcomes afforded through approval of the original application including visual privacy, solar access and view sharing are not compromised.

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

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

The proposed development will comply with the provisions of the Building Code of Australia. There will be no detrimental effects on the occupants through the building design which will achieve the relevant standards pertaining to health, safety and accessibility.

#### *Construction*

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

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

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

#### The suitability of the site for the development.

*Does the proposal fit in the locality?*

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

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

*Are the site attributes conducive to development?*

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

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

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

The public interest.

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

## **8.0 Conclusion**

The modifications provide for a general refinement in the detailing of the approved development in terms of balcony design, materials/ finishes and buildability and also seeks to address issues identified in the preparation of the final Construction Certificate documentation in relation to BCA compliance, fire services design and location, mechanical services/condenser location and compliance with the Apartment Design Guide (ADG) in relation to minimum floor to floor heights/buildability.

The proposed modifications necessitate a rationalisation of floor levels and overall building height with the New South Wales Fire Brigade requirements in relation to the design and location of the required fire hydrant booster assembly unfortunately necessitating the removal of an additional tree (Tree 3) located within the road reserve. Such additional tree loss is compensated for through the implementation of the enhanced site landscape regime which includes the provision of 26 additional trees on the site as detailed within the accompanying arborist report and on the accompanying landscape plans.

The modifications to the design and detailing of the development will enhance the overall design quality of the development and its contribution to the streetscape with the integrated landscape regime ensuring that the development will sit within a landscaped setting. Importantly this submission demonstrates that the heritage conservation, landscape, drainage and residential amenity outcomes afforded through approval of the original application including visual privacy, solar access and view sharing are not compromised.

To that extent Council can be satisfied that the development as modified represents substantially the same development as originally approved and accordingly is appropriately dealt with by way of Section 4.56 of the Act.



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

Yours sincerely

**BOSTON BLYTH FLEMING PTY LTD**

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

**Greg Boston**

B Urb & Reg Plan (UNE) MPIA

**Director**