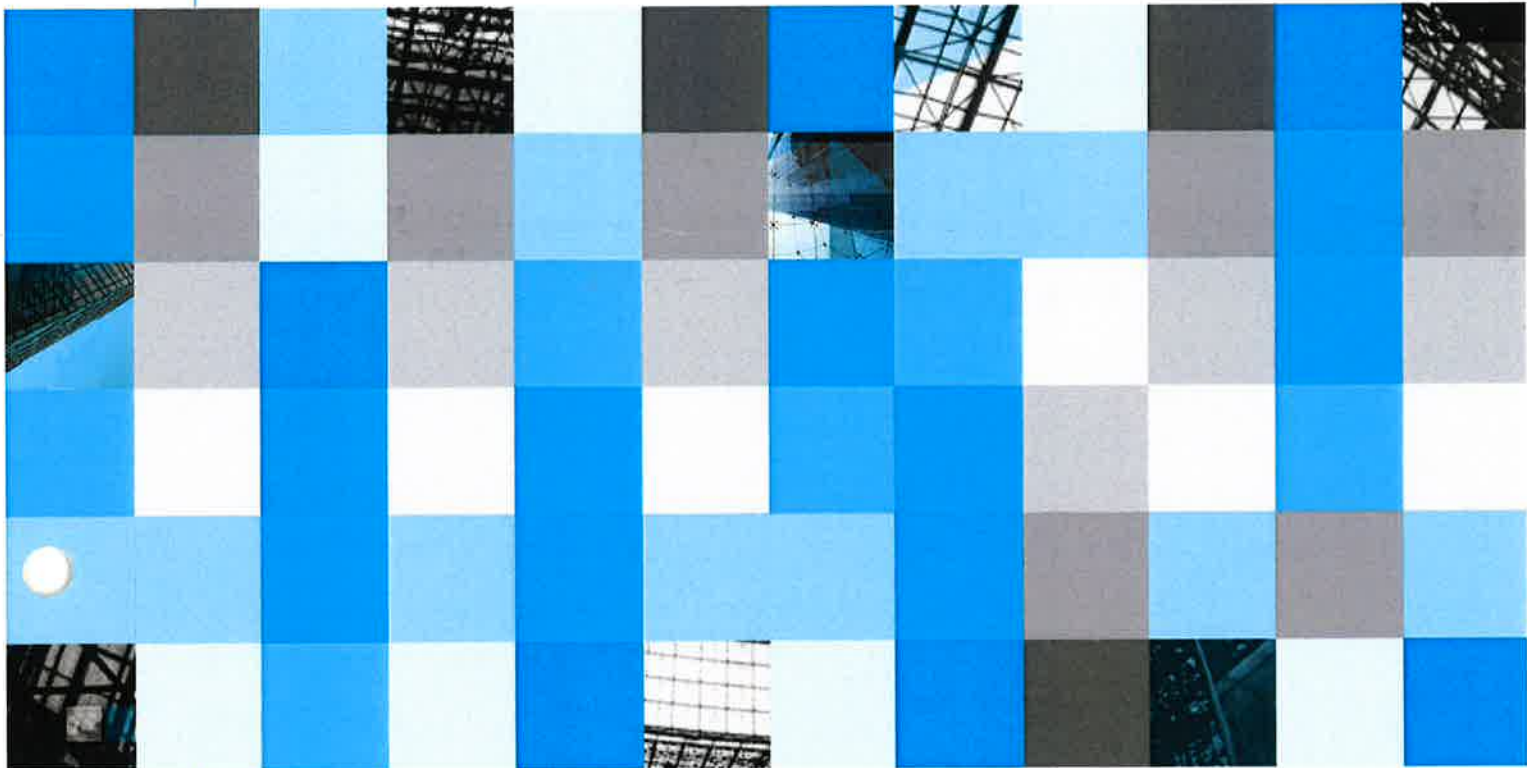


**SUTHERLAND
& ASSOCIATES
PLANNING**



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27-29 North Avalon Road, Avalon Beach

Section 4.55(8) Planning Statement

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27-29 NORTH AVALON ROAD, AVALON BEACH

Minor modifications to the approved development

10 April 2024

Prepared under instructions from
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1.0 INTRODUCTION

Development Application DA2019/1260 for demolition works and construction of a seniors housing development comprising ten (10) self-contained dwellings for seniors or people with a disability and basement parking for twenty resident vehicles and two visitor spaces, site consolidation and removal of 45 trees at 27 and 29 North Avalon was approved by the Land and Environment Court on 26 August 2021 (Armada Avalon Pty Ltd v Northern Beaches Council [2021] NSWLEC 1490).

This submission has been prepared as supporting documentation for an application made pursuant to Section 4.55(8) and Section 4.55(1A) of the Environmental Planning and Assessment Act 1979, to modify the consent for Development Application DA2019/1260.

The application proposes a minor increase to the height of the lift overrun, and carpark/garbage room exhaust structure, as detailed on the architectural plans prepared by Envirova Studio. The application also seeks to modify the front fence design to provide an area for the provision of a street number and building identification sign.

The amended proposal retains fundamental components of the approved development with no changes proposed to the number of dwellings or bedrooms within the development, no change to the number of car parking spaces within the development and no changes to the footprint of the development. The development does not result in any reduction of the landscaped area or deep soil zone within the development, and the proposal remains compliant with the applicable landscaped open space and deep soil area requirements. The amended proposal does not require the removal of any additional trees.

The proposed modifications will have no material impact on the streetscape as the modified lift overrun/garage and car park exhaust is located behind the front building line (and northern row of buildings), sits comfortably below the approved ridge height of the four buildings, and does not alter the approved footprint of the development. In addition, the proposed street number and building identification sign has been integrated into the front fence design.

The proposed modifications do not result in any significant or non-complying impacts on the amenity of the adjoining properties.

Having regard to the applicable legislative framework, the proposed amendments to the approved development are such that the development retains the same fundamental characteristics and is therefore substantially the same development. The amended development remains consistent with the aims and objectives of the relevant environmental planning instruments and development control plan whilst remaining compatible with the character of the locality.

2.0 SITE DESCRIPTION AND LOCATION

The site is located in the suburb of Avalon Beach which is located within the Northern Beaches Local Government Area. The site is located to the east of Barrenjoey Road and is south-west of Bangalley Head. The location of the site is shown in Figure 1.

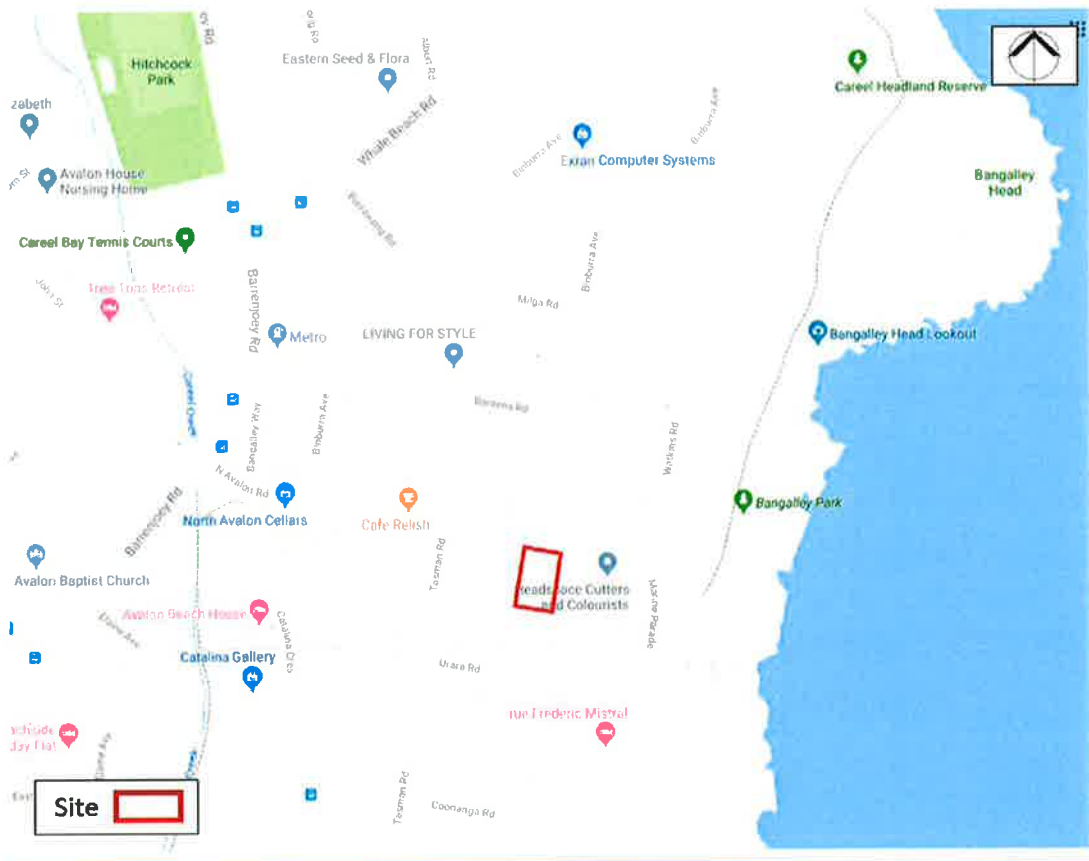


Figure 1:

Location of the Site (Source: Google Maps 2021)

The site is legally described as Lot 32 DP 8394 and Lot 33 DP 8394 and is known as 27 North Avalon Road and 29 North Avalon Road. The site is located on the southern side of North Avalon Road, between Tasman Road and Marine Parade. An aerial view of the site and surrounds is provided at Figure 1.

The site is rectangular in shape and has a total area of 2,226 square metres. The site has a 36.58 metre frontage to North Avalon Road and a side boundary length of 60.96 metres. The topography of the site is characterised by a gradual fall from the east to the west and is otherwise generally level.

The seniors housing development approved under DA2019/1260 is currently under construction.

Bus stops are located approximately 400 metres walking distance of the site on Barrenjoey Road as shown in Figure 1. Footpath access to the bus stops is proposed along the southern side of North Avalon Road. A pedestrian island has been constructed on Barrenjoey Road to allow pedestrians to cross Barrenjoey Road.

The site is serviced by the Keoride public transport service. The Keoride service operates on the Northern Beaches and picks passengers up from either home, a designated point of interest within the service area or

the nearest bus stop and takes passengers directly to the closest transport hub at Avalon, Narrabeen, Warriewood or Mona Vale.



Figure 2:

Aerial View of the site (Source: Six Maps, Department of Lands 2021)

The surrounding development consists of one and two storey detached dwellings. The majority of houses have a pitched roof and are either face brick, painted brick/render or weatherboard with a light external colour scheme. The front setback of dwellings in the street tends to be landscaped with groundcovers, shrubs and a limited number of trees. Front fences of varying heights and styles are a notable feature of the streetscape of North Avalon Road.

A small pocket of local shops is located to the west of the site, on the southern side of North Avalon Road.

A seniors housing development known as 'Drift' has been constructed north of the western end of North Avalon Road at 4-6 Bangalley Way, Avalon Beach. This development was approved by Council on 29 September 2016 under Development Application No. N0555/155 and subsequently modified under Modification Application No. N0555/15/S96/1) by way of a section 34 agreement in the Land and Environment Court. A seniors' housing development has also been constructed at 7 North Avalon Road, Avalon Beach.

3.0 PROPOSED MODIFICATIONS

3.1 Approved Development

Development Application DA2019/1260 for demolition works and construction of a seniors housing development comprising ten (10) self-contained dwellings for seniors or people with a disability and basement parking for twenty resident vehicles and two visitor spaces, site consolidation and removal of 45 trees at 27 and 29 North Avalon was approved by the Land and Environment Court on 26 August 2021 (Armada Avalon Pty Ltd v Northern Beaches Council [2021] NSWLEC 1490).

A modification application for internal and external changes to the approved development was approved by the Land and Environment Court on 20 October 2022 (Mod2022/0397). A second modification application was submitted on 22 May 2023 to rely on Keoride as a public transport service to satisfy the requirements of clause 26 (Mod2023/0276). An appeal has been lodged in relation to the deemed refusal of this application.

3.2 Proposed Modifications

The application proposes an increase to the height of the approved lift overrun, and carpark and garbage exhaust structure, to RL22.87. No RL was provided on the approved plans for these structures, however it was slightly below RL21.43. The structure that is to be increased in height is located behind the northern row of buildings, on the western side of the pedestrian pathway to the buildings at the rear of the site.

The application also includes a modification to the front fence design to include the street number and building name. This modification is necessary to enable the identification of the building and is consistent with condition 52, which states that the house building number is to be affixed to the building to be readily visible from the public domain.

The proposed modifications are shown on the plans prepared by Environa Studio. Figures 3 and 4 below show the approved and proposed, north and east elevations.

3.3 Plans to be modified

The following table lists the plans prepared by Environa Studio that accompany the Section 4.55 application.

Name of Plan	Revision	Plan Number	Date	Prepared By
Sections AA/BB	J	120	3/04/2024	Environa Studio
Elevations – North + East	L	130	3/04/2024	Environa Studio
Elevations – South/West	M	131	3/04/2024	Environa Studio
North + South (Internal)	N	132	3/04/2024	Environa Studio

3.4 Conditions to be modified

The following table summarises the changes required to the conditions of consent as a result of the proposed modifications.

Condition	Required Modification
1a Approved plans and supporting documentation	The condition is to be modified to refer to the amended plans.

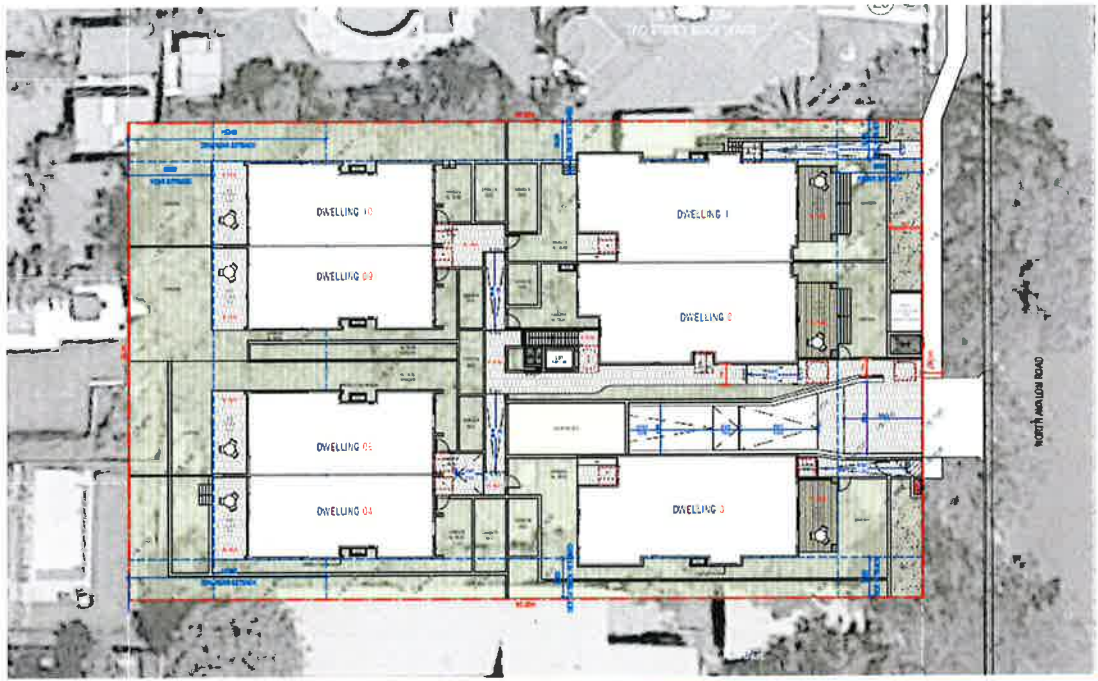


Figure 3:

Extract of the approved Site Plan showing the location of the lift and car park/garbage exhaust at the centre of the site (Drawing 030 Revision J prepared by EnviroStudio)



Figure 4:

Extract from the approved East Elevation (Drawing 130 Revision K prepared by EnviroStudio)



Figure 5:

Extract from the proposed North and East Elevation (Drawing 131 Revision L prepared by Environa Studio)

4.0 STATUTORY PLANNING FRAMEWORK

4.1 Environmental Planning & Assessment Act 1979

Section 4.55(8) provides that where the Land & Environment Court has issued a consent, the Court is enabled to also modify that consent, but that the functions imposed on a consent authority under subsection (1A)(c) or subsection (2) (b) and (c) are still to be exercised by the relevant consent authority and not the Court. These functions relate to consultation with concurrence authorities and public notification.

Accordingly, the subject application is made to the Land & Environment Court to modify Development Consent DA/2019/1260 pursuant to Section 4.55(8) of the *Environmental Planning and Assessment Act 1979*.

The application is also lodged pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*. Section 4.55(1A) empowers the Court to modify the development consent, as follows:

(1A) **Modifications involving minimal environmental impact** 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 proposed modification is of minimal environmental impact, and

(b) 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

(c) it has notified the application in accordance with—

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1), (2) and (5) do not apply to such a modification.

In accordance with section 4.55(1A) the proposal is appropriately categorised as being of minimal environmental impact and "substantially the same" for the following reasons:

- No change is proposed to the approved use of the development.
- No change is proposed to the floor space ratio of the development, the number of dwellings on the site or the number of bedrooms within each dwelling.
- The proposed modification only relates to the height of the lift overrun and car park and garage exhaust. The increased height of this structure does not exceed the ridge height of the four approved buildings.
- No change is proposed to the number of car parking spaces on the site.
- No change is proposed to the setback of the buildings from the front boundary.
- No change is proposed to the rear setback of the development.
- No change is proposed to the approved minimum side setbacks.

- No change is proposed to the landscaped area or deep soil area on the site.
- The proposed modifications do not result in the removal of any additional existing trees.

In accordance with Section 4.55(1A) of the EP&A Act in determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The provisions of relevant environmental planning instruments and development control plans are relevant matters for consideration under Section 4.15(1) and are addressed in Sections 4.2 ,4.3 and 4.4 of this Statement.

Section 4.55(3) also requires the consent authority to take into consideration the reasons given by the consent authority for the grant of consent that is sought to be modified. The proposed modifications do not alter any aspects of the proposal that are critical to the judgement for *Armada Avalon Pty Ltd v Northern Beaches Council [2021] NSWLEC 1490*.

4.2 Environmental Planning and Assessment Regulation 2021

Clause 100 of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation) sets out the information which must be provided with an application for the modification of a development consent.

The following table summarises how the requirements of clause 100(1) have been addressed in the application documentation.

Clause 100(1) Requirement	Comment
(a) the name and address of the applicant,	Provided at lodgement.
(b) a description of the development that will be carried out under the development consent,	Section 3.1 outlines the development that was approved and section 3.2 details the proposed modifications.
(c) the address and folio identifier of the land on which the development will be carried out,	As detailed in section 2 of this Statement, the site is known as 27-29 North Avalon Road, Avalon Beach and the site is legally described as Lot 32 DP 8394 and Lot 33 DP 8394.
(d) a description of the modification to the development consent, including the name, number and date of plans that have changed, to enable the consent authority to compare the development with the development originally approved,	Sections 3.2 and 3.3 of this Statement detail the proposed modifications and includes the number, number and date of plans that have changed.
(e) whether the modification is intended to— (i) merely correct a minor error, misdescription or miscalculation, or (ii) have another effect specified in the modification application,	Addressed in section 4.1 of this Statement.
(f) a description of the expected impacts of the modification,	Addressed in sections 4.1, 4.3 and 4.4 of this Statement.
(g) an undertaking that the modified development will remain substantially the same as the	Addressed in section 4.1 of this Statement.

Clause 100(1) Requirement	Comment
development originally approved,	
(h) for a modification application that is accompanied by a biodiversity development assessment report—the biodiversity credits information,	Not applicable.
(i) if the applicant is not the owner of the land—a statement that the owner consents to the making of the modification application,	Owner's consent accompanies the application.
(j) whether the modification application is being made to— (i) the Court under the Act, section 4.55, or (ii) the consent authority under the Act, section 4.56.	The application is being made to the court under section 4.55.

Clause 100(3) of the EP&A Regulation relates to the requirements for a BASIX certificate for modifications to a development consent under section 4.55(1A) or (2) of the Act. The proposed modification does not result in a development that is inconsistent with the BASIX Certificate and therefore a new certificate is not required.

4.3 Environmental Planning Instruments

4.3.1 State Environmental Planning Policy (Industry and Employment) 2021

A modification to the front fence design is proposed to provide a suitable area for the provision of a wall sign that includes the street number, development name and a symbol or logo for the development.

Chapter 3 'Advertising and Signage' of State Environmental Planning Policy (Industry and Employment) applies to all signage that can be displayed with or without development consent under another environmental planning instrument that applies to the signage and is visible from any public place or public reserve. Chapter 3 does not apply to signage that is exempt development.

The wall sign would likely be exempt development if it was installed on an existing boundary fence or wall.

Pursuant to Part 3.2, Section 3.6 of the SEPP, a consent authority must not grant development consent to application to display signage unless the consent authority is satisfied that the signage the subject of the application is consistent with the objectives of the Chapter and the signage satisfies the assessment criteria specified in Schedule 5.

The proposed signage is necessary as it allows for the identification of the development. The signage is subtle, integrated into the fence design, and will not result in any adverse impact on the streetscape. The signage is not inconsistent with the assessment criteria for signage in Schedule 5 of the SEPP.

4.3.2 State Environmental Planning Policy (Housing) 2021

State Environmental Planning Policy (Housing) 2021 commenced on 26 November 2021. Clause 10(2) of SEPP (Housing) 2021 repeals *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

The savings and transitional provisions are found in Schedule 7A of SEPP Housing and are as follows:

- (1) This Policy does not apply to the following matters—
 - (a) a development application made, but not yet determined, on or before the commencement date,
 - (b) a concept development application made, but not yet determined, on or before the commencement date,
 - (c) a staged development application made subsequent to a concept development application approval granted on or before the commencement date,
 - (d) a development consent granted on or before the commencement date,
 - (da) an application to modify a development consent granted after the commencement date, if it relates to a development application made, but not determined, on or before the commencement date,
 - (e) an environmental impact statement prepared in compliance with an environmental assessment requirement that is—
 - (i) issued by the Planning Secretary on or before the commencement date, and
 - (ii) in force when the statement is prepared,
 - (f) the carrying out of an activity after the commencement date if—
 - (i) notice of the activity has been given to the council under the repealed ARH SEPP, clause 40A(2), and
 - (ii) an approval required under the Act, Part 5 for carrying out the activity is granted by the determining authority before 26 November 2022.
- (2) The provisions of a repealed instrument, as in force immediately before the repeal of the repealed instrument, continue to apply to a matter referred to in subsection (1).

The savings and transitional provisions clearly state that the Policy does not apply to a development consent granted or made before the commencement date and the provisions of a repealed instrument continue to apply. As development consent was granted on 26 August 2021, prior to the commencement date of SEPP (Housing) 2021, the provisions of SEPP (Housing) 2021 are not applicable to the modification application and the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 are addressed in section 4.3.2 below.

4.3.3 State Environmental Planning Policy (Housing for Seniors of People with a Disability) 2004

State Environmental Planning Policy (Housing for Seniors of People with a Disability) 2004 applies to the site and the approved development. The approved development is for a seniors housing development consisting of ten (10) in-fill self-care housing dwellings.

Chapter 1 of the SEPP sets out preliminary requirements for seniors housing developments such as the land to which the policy applies. Chapter 2 sets out key concepts relevant to the Policy. The proposed modifications do not alter the development's compliance with Chapters 1 or 2 of the SEPP.

Chapter 3 of the SEPP permits seniors housing on the site if the development is carried out in accordance with the Policy.

The remainder of this section of the Statement addresses the proposal's consistency with the provisions of Chapter 3 that are relevant to the modification application.

Design of in-fill self-care housing

Clause 31 provides that in determining a development application for development for the purposes of in-fill self-care housing, a consent authority must consider the Seniors Living Policy: Urban Design Guideline for Infill Development, March 2004, published on the Department's website. The proposed modification does not alter the proposal's consistency with the design guidelines.

Design Principles

Clause 32 of SEPP HSPD provides that a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2. The proposed modifications do not alter the proposal's consistency with any design principles.

Development standards

A consent authority must not consent to a development application made pursuant to the Chapter unless the proposed development complies with the standards specified in clause 40. The following table summarises the proposal's compliance with the requirements of clause 40.

Clause	Requirement	Proposal
Clause 40(4)(a) Height	8 metres or less (measured from natural ground level to the ceiling on the topmost floor)	The increased height of the lift overrun and garage and car park exhaust structure remain below the 8 metre height limit, even though the height limit doesn't apply to such a structure.

Self-Contained dwellings

Clause 41 provides that a consent authority must not consent to a development application made pursuant to Chapter 3 of the SEPP to carry out development for the purpose of a hostel or self-contained dwelling unless the proposed development complies with the standards specified in Schedule 3 for such development.

The proposed modifications do not alter the proposal's compliance with the standards in Schedule 3.

[Standards that cannot be used to refuse development consent for self-contained dwellings](#)

Pursuant to clause 50 a consent authority must not refuse consent to a development application made pursuant to the SEPP on any of the grounds listed in the clause if the associated requirement is met. The following table identifies each of the grounds listed in clause 50 and details the proposal's compliance with the SEPP requirements.

Clause	Requirement	Proposal
Clause 50(2) Building Height	Maximum 8 metres (measured from ground level to the ceiling on the topmost floor)	The increased height of the lift overrun and garage and car park exhaust structure remain below the 8 metre height limit, even though the height limit doesn't apply to such a structure.

4.3.4 Pittwater Local Environmental Plan 2014

The proposed amendments do not raise any issues of substance for further consideration with respect to the provisions of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

4.4 Pittwater 21 Development Control Plan

The proposed modifications do not result in any change to the development's compliance with the provisions of the Pittwater 21 Development Control Plan (P21DCP).

5.0 CONCLUSION

This submission has been prepared as supporting documentation for an application made pursuant to Section 4.55(8) and Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 to modify the consent for Development Application DA2019/1260.

The application proposes a minor modification to the height of the lift overrun and car park /garbage room exhaust. The application also seeks to modify the front fence design to provide an area for the provision of a street number and building identification sign.

The amended proposal retains the fundamental components of the approved development with no changes proposed to the number of dwellings or bedrooms within the development, no change to the number of car parking spaces within the development and no changes to the footprint of the development.

The proposed increased height for the centrally located lift overrun and garage and car park exhaust will not result in any impact on the streetscape, as the modified element of the development is located behind the front building line, sits comfortably below the approved ridge heights for the four buildings, and no change is proposed to the building footprint of the structure. The proposed signage is clearly visible to pedestrians yet the streetscape impact of the signage is limited as the sign has been integrated into the design of the front fence.

The proposed modifications do not result in any material impacts on the amenity of the adjoining properties.

As detailed in this submission the proposed modifications may be made by the consent authority in accordance with Section 4.55(8) and 4.55(1A) of the Environmental Planning and Assessment Act 1979. The proposal is of minimal environmental impact and substantially the same development as originally approved and will not result in any unreasonable impacts on the amenity of the locality.