

OUR REF: 21224 – S4.55

31 August 2021

Robbert Wiggins
c/o Bonus + Associates
Level 1, 597 Darling Street
Rozelle NSW 2039

95 paddington st, paddington nsw 2021
ph: 02 9362 3364 fax: 02 9362 3073
email: info@gsaplanning.com.au
www.gsaplanning.com.au
ABN 89 643 660 628

Attention: Nick England

Dear Nick,

**RE: SECTION 4.55 MODIFICATION FOR DEVELOPMENT APPLICATION (DA NO. 2008/1216)
NO. 1184-1186 PITTWATER ROAD, NARRABEEN**

This Section 4.55 Modification has been prepared for Robert Wiggins C/ Bonus + Associates by George Karavanas Planning Pty Ltd – (hereafter referred to as GSA Planning). On behalf of the applicant, we hereby seek Council approval for a Section 4.55 modification of the approved residential flat building on the site (DA No. 2008/1216). This submission seeks to modify Condition 1A – Approved Plans and Supporting Documentation and Condition 80 – Allocation of Spaces.

The proposed modifications involve internal alterations to the basement floor level which include additional excavation to the rear to accommodate additional storage and to support a new concrete contiguous pile seawall. The new seawall and stairs are proposed to replace the existing seawall located at the frontage of Narrabeen Beach which has been subject to damage due to coastal erosion from recent storm events.

The proposed development is the subject of a Section 4.55 modification and not a new development application. This is because the proposal is substantially the same as the approved development as it will not alter the approved building envelope, nor will it alter the appearance of the building and is not likely to adversely affect the amenity of the surrounding residences.

In establishing that the proposal satisfies the test of substantially the same, we have reviewed various previous cases, which are similar to the proposal, that have been determined by the Court to satisfy this test. This included *Moto Projects (No. 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 2880, which deemed the proposed development to be ‘substantially the same qualitatively and quantitatively.’

Placing aside merit considerations, which will be addressed throughout this submission, in our opinion the proposal is substantially the same development as that which was originally approved. This is consistent with the decision in *Hrsto v Ku-Ring-Gai Council* [2011] NSWLEC 1169. The development will continue to constitute a two-storey residential flat building with basement parking, consistent with the approval issued by Northern Beaches Council. Additionally, the extent of the proposed modifications is much less than those outlined in the above cases.

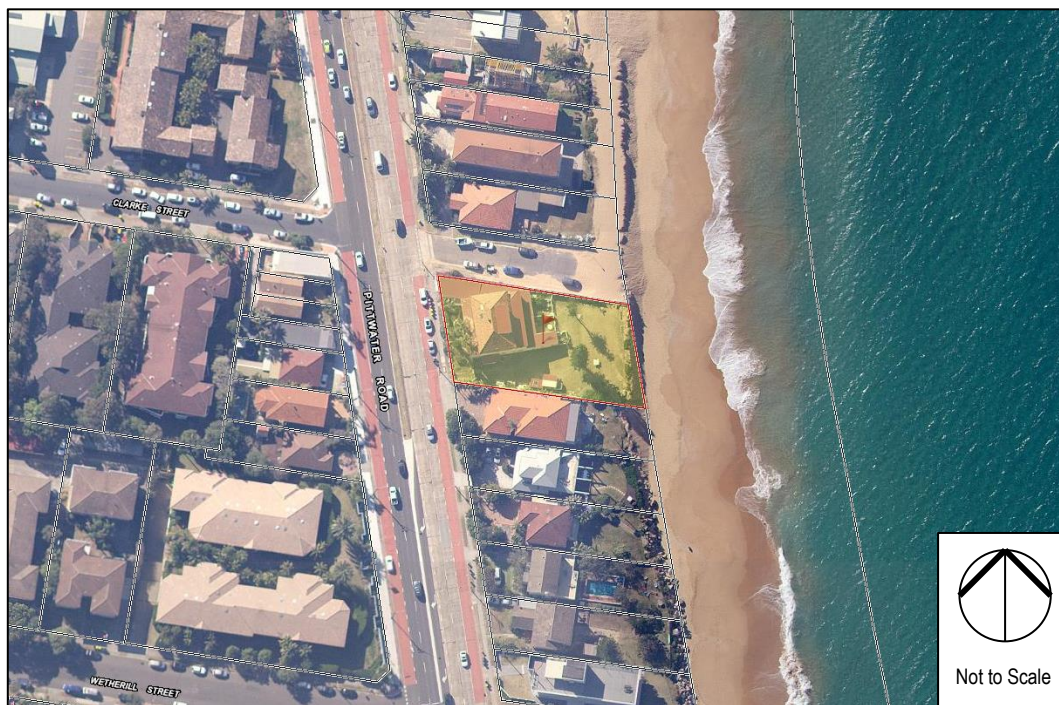
This report includes an assessment of substantially the same; a brief site analysis; a brief background to the proposal; the conditions of development consent requested to be modified; a description and justification of the proposed modifications; an environmental planning assessment; and a conclusion.

1.0 SITE ANALYSIS

The Site

The subject site is located approximately 18.3km north-east of the Sydney Central Business District (CBD), 3.5km from Dee Why and is located within the Local Government Area (LGA) of Northern Beaches Council (see **Figure 1**).

The site is trapezoidal shaped, with a northern frontage to Clarke Street of 54.58m, an eastern frontage to Narrabeen Beach of 29.825m, a southern boundary of 54.58m and a western frontage to Pittwater Road of 30.48m, providing a total site area of 1,577m².



Source: SIX Maps


 Subject Site

Figure 1: Location Plan

The site is occupied by a two-storey residential flat building comprising 12 units and a single-storey shop on the north-western part of the site, with a frontage to Pittwater Road (see **Photograph 1**) on the following page.



Photograph 1: The subject site, as viewed Pittwater Road

The Surrounds

To the north, on the opposite side of Clarke Street, is a single-storey dwelling-house on the corner of Pittwater Road and Clarke Street. Further to the north is a two-storey residential flat building. To the east is Narrabeen Beach. To the south at No 1182 Pittwater Road is a two-storey cement rendered brick and tile duplex, comprising one dwelling on the ground floor and one on the first floor. Further to the south are single-storey dwelling houses and three-storey residential flat buildings. To the west, on the opposite side of Pittwater Road, is a single-storey vacant shop on the corner of Clarke Street and Pittwater Road, and single-storey dwelling-houses.

2.0 BACKGROUND

On **21 August 2008**, a Development Application (DA No. 1216/2008) was lodged with Warringah Council for the demolition of an existing heritage building and alterations and additions to create five (5) residential units with basement car parking and strata subdivision. On **23 April 2009**, Council granted development consent to the proposal subject to a number of deferred commencement conditions. The deferred commencement conditions were subsequently satisfied, and the consent was deemed to be operative on 16 September 2009.

On **17 April 2014**, a Section 96 Modification (Mod 2014/0068) was lodged with Council for the following works:

- *Relocation of the approved basement carpark from the front (west) portion of the site to the rear (east) portion of the site;*
- *Provision of a revetment sea wall located adjacent to the rear (east) portion of the site to prevent coastal erosion; and*
- *Relocation to the basement access stairs to suit the modification.*

On **09 July 2014**, Council granted development consent to the proposed modifications to DA No. 1216/2008).

On **12 November 2018**, a Section 4.55 Modification (Mod 2018/0604) was lodged with Council for the following works:

- *Extending the eastern setback of the ground and 1st floor of Units 2, 4 and 5 by approximately 3m;*
- *Corresponding increase in the floor area of Units 2, 4 and 5 of between 32m² and 52m² ;*
- *Enlarging the basement area adjoining the Pittwater Road frontage by approximately 117m² , for storage area;*
- *Partial deletion of the rear path leading to the rear stairs; and*
- *Staging of works into three (3) components:*
 - *Stage 1: Seaward protective works / landscaping.*
 - *Stage 2: Construction of southern portion of basement and Unit 5; and*
 - *Stage 3: Construction of northern portion of basement and Units 1 to 4.*

Following recent storm events, the Stage 1 seawall works have been affected by coastal erosion and have subsequently failed. This has resulted in settlement of the north east corner of the seawall, rotation of the seawall seawards and subsidence of the garden area east of the existing buildings on site. The seawall requires significant repairs and partial reconstruction.

As such, the proposed modification seeks to dismantle the existing seawall and replace it with a reinforced concrete contiguous pile seawall which will be of a consistent height, profile and construction methodology to that presently under construction to adjoining properties south of the site.

3.0 SUBSTANTIALLY THE SAME ASSESSMENT

3.1 Qualitative and Quantitative Assessment

In **qualitative terms**, the proposed modifications continue to provide an approved residential flat building with basement parking that remains within the approved external building envelope. The proposal will not result in any alteration to the existing building. The relocated car parking will be confined to below ground and the new seawall will not adversely impact the appearance of the subject site. Importantly, the proposal will retain an appropriate landscape setting capable of supporting lawn and small to medium sized trees.

In **quantitative terms**, the proposed modifications retain the same use, number of dwellings, landscaped area and the overall building envelope will remain as approved. While the proposed modifications will result in an increase in the volume of excavation, it will be contained within the basement floor level and it will be generally consistent with the previously approved basement level which is built to the side boundaries. Furthermore, the proposal will maintain a compliant amount of carparking for residents and visitors.

In both **quantitative and qualitative terms**, the proposed development as modified will remain substantially the same as the development for which consent was originally granted. The proposed modifications will not alter the presentation of the proposed building and, as the modification relate predominately to basement car parking that will take place wholly below existing ground level, there will be minimal environmental impact. The development as modified is thus substantially the same.

3.2 Land and Environment Court Cases Related to ‘Substantially the Same’

There are numerous examples of Section 4.55 Modifications approved by many Councils, including Woollahra, which have involved a far greater degree of modification. Such modifications that have passed the test of Section 4.55 and have involved changes including the following, inter alia:

- Changes to the facades and external appearance;
- Changes to the envelope and profile of the development;

- Increases in floor space;
- Increases in height (in metres);
- Increases in number of storeys;
- Additional basement levels; and
- Increases in number of dwellings.

While such examples may be helpful in understanding the threshold that has been applied by Councils, consideration should also be given to applications for modification determined by the Court. There have been numerous appeals where “substantially the same” has been shaped and informed by Court decisions. Two of these cases will now be discussed.

Moto Projects (No. 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280

In *Moto Projects (No. 2) Pty Ltd v North Sydney Council*, the Court was not satisfied the proposed modifications were “substantially the same development” as the approved development of the North Sydney Club, with the deletion of an access ramp from Warringah Expressway.

Bignold J considered the separate ingress to be: ‘a material and essential physical element of the approved development’ [59]. In his assessment Bignold J, referred to the Council Planning Report which he said ‘places undue reliance upon the modification representing “only a fraction of the overall development, inter alia:

*52. That opinion [Council’s Planning Report] appears to involve some form of numeric or quantitative evaluation of the modification as a particle of the whole, without attempting any **qualitative** assessment. With respect, I think this approach is legally flawed and I am entirely unable to accept it...*

55. The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the (currently) approved development.

56. The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

The quantitative and qualitative aspects have been outlined in Section 3.1 of this letter. The proposed modifications will continue to provide a residential flat building with basement parking. The overall building envelope and appearance of the approved development will not change as a result of the modifications. The proposal is considered to be qualitatively the same as the approved development.

Accordingly, in our opinion, the proposed modifications satisfy the elements raised in *Moto Projects (No. 2) Pty Ltd* and is considered to be substantially the same as the previously approved development.

Hrsto v Ku-Ring-Gai Council [2011] NSWLEC 1169

This case considered significant alterations whereas, the proposed modifications could be considered minor.

In *Hrsto v Ku-Ring-Gai Council*, the modifications proposed various changes including an increase in the number of units from 51 to 66, a reduction in the number of car parking spaces from 96 to 92, an increase in floor area from 5304m² to 5520m², an increase in floor space ratio (FSR) from 1.25:1 to 1.3:1, a decrease in the building footprint from 2114m² to 1907m², an increase in deep soil are and; a reduction

in the basement volume by 500m³ to 11,700m³. The proposed modifications listed were accepted as substantially the same development, inter alia:

- *The proposed development is consistent with State Environmental Planning Policy No. 65 – Design of Residential Flat Buildings and the Residential Flat Design Code;*
- *The overall mass and volume of the development is generally the same, notwithstanding the variation in the FSR, which forms the basis of an improved internal design and amenity and overall improved internal planning;*
- *The impact on neighbours is generally the same or improved and there is no significant change to the relationship to adjoining properties;*
- *The materials proposed are generally the same;*
- *The height above natural ground level is essentially the same;*
- *The height in storeys is the same, there is no apparent or visual change to the streetscape, the proposed residential nature is unchanged, or in the alternative there is no significant change to the nature or intensity of the residential use;*
- *There is no significant change in the architectural appearance and character of the proposed development, the modulation detailing proportion and finishes remain generally the same;*
- *The building length and setbacks, envelope and footprint remain generally unchanged and are in accordance with the existing approval, the location of the car park entrance remains the same; and*
- *The location, scale, size, shape and appearance of the proposed development generally and essentially remain the same, creating minimal environmental impacts.*

In accepting the proposed amendments as listed above, the Court determined the modification was 'essentially or materially' the same as the previous approval. The Court considered the proposal to be qualitatively, of little change to the appearance of the proposed building.

The proposed modifications to the previously approved development retain the approved use and the maximum height and setbacks of the building. The overall building envelope of the approved development will not change. Importantly, there is not likely to be any impact on surrounding development as a result of the excavation for the sea wall as it is similar to the existing approval and contained within a basement level.

As the proposal is quantitatively, qualitatively and essentially substantially the same as approved development, the modifications can be considered under Section 4.55.

4.0 REQUESTED MODIFICATIONS TO DEVELOPMENT CONSENT

As indicated, this submission proposes modification to one condition of DA No. 1216/2008. This will be discussed below:

4.1 Condition 1A - Approved Plans and Supporting Documents

Condition 1A of the development consent relates to the approved architectural plans and documentation. It is proposed to modify this condition to reflect the proposed design changes which form part of this modification. The existing conditions are as follows:

Existing Condition:

Drawing Number	Dated	Prepared By
DA01 – O	05 October 2018	Bonus and Associates Architects
DA02 – R	12 March 2018	Bonus and Associates Architects
DA03 - S	05 October 2018	Bonus and Associates Architects
DA04 - L	12 March 2018	Bonus and Associates Architects

DA05 – K	12 March 2018	Bonus and Associates Architects
DA06 – N	12 March 2018	Bonus and Associates Architects
DA07 - S	24 September 2018	Bonus and Associates Architects
DA08 - O	12 March 2018	Bonus and Associates Architects
DA17 - B	05 October 2018	Bonus and Associates Architects

It is proposed to amend the table to reference the drawings of the proposed modifications, as follows:

Proposed Condition:

Drawing Number	Dated	Prepared By
DA01 – Q	01 September 2021	Bonus and Associates Architects
DA02 – T	01 September 2021	Bonus and Associates Architects
DA03 - U	01 September 2021	Bonus and Associates Architects
DA04 – M	14 January 2021	Bonus and Associates Architects
DA05 – L	14 January 2021	Bonus and Associates Architects
DA06 – O	14 January 2021	Bonus and Associates Architects
DA07 - T	14 January 2021	Bonus and Associates Architects
DA08 - P	14 January 2021	Bonus and Associates Architects
DA17 - B	05 October 2018	Bonus and Associates Architects

4.2 Condition 80 – Allocation of Spaces

Condition 80 of the development consent relates to the approved architectural plans and documentation. It is proposed to modify this condition to reflect the proposed design changes which form part of this modification. The existing condition is as follows:

Existing Condition:

Twelve (12) car parking spaces provided shall provided and maintained at all times on the subject site. The spaces shall be allocated in the following proportions:

10	-	Residential
2	-	Residential - Visitors

Car-parking provided shall only be used in conjunction with the uses contained within the development. Each car parking space allocated to a particular residential unit or tenancy shall be line marked and numbered or signposted to indicate the unit/tenancy to which it is allocated.

Proposed Condition:

Eleven (11) car parking spaces shall be provided and maintained at all times on the subject site. The spaces shall be allocated in the following proportions:

9	-	Residential
2	-	Residential – Visitors

Car-parking provided shall only be used in conjunction with the uses contained within the development. Each car parking space allocated to a particular residential unit or tenancy shall be line marked and numbered or signposted to indicate the unit/tenancy to which it is allocated.

5.0 DESCRIPTION & RATIONALE OF MODIFICATIONS

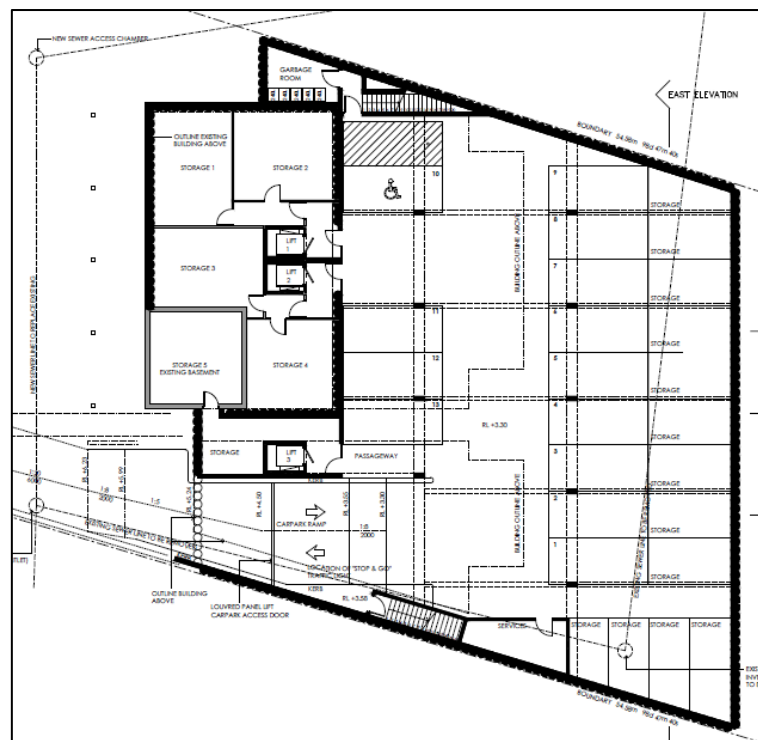
The proposed modifications involve internal alterations to the basement floor level which include additional excavation to the rear to accommodate additional storage. A new concrete contiguous pile seawall and stairs are also proposed to replace the existing seawall located at the frontage of Narrabeen Beach which has been subject to damage from coastal erosion due to recent storm events.

A floor by floor description is provided below. Further details of the proposed development are contained in the architectural drawings, separately submitted.

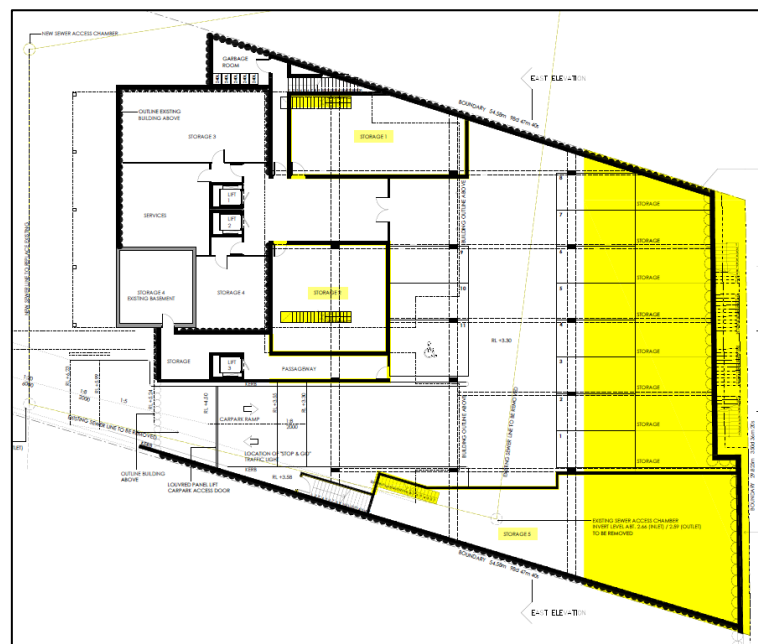
Basement Floor Level

The proposed modifications to the approved Basement Floor Level include:

- Increase excavation by approximately 861m³ toward the eastern boundary to accommodate additional storage;
- Construction of a new concrete contiguous pile to accommodate a new seawall at the eastern extent of the site;
- Relocation of car parking and reduction of two car parking spaces resulting in 11 car parking spaces in the basement; and
- Provision of internal stairs from storage areas to Units 1, 3 and 5 located on the Ground Floor Level (see **Figure 2** on the following page).



Approved



Proposed

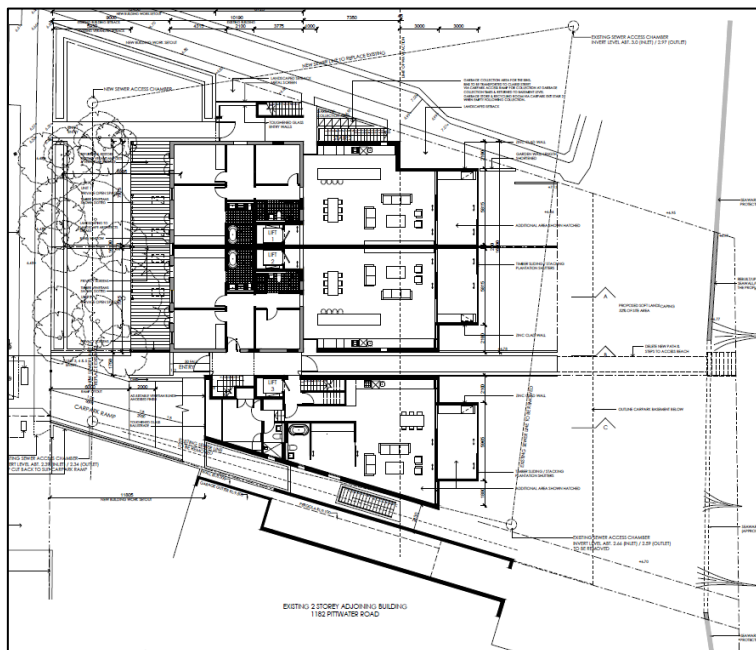
Source: Bonus and Associates

Figure 2: Approved and Proposed Basement Floor Plan

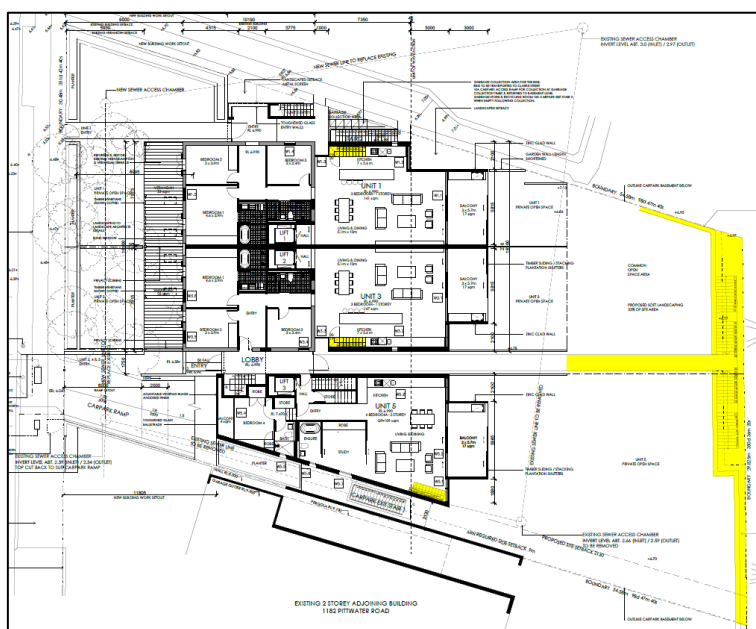
Ground Floor Level

The proposed modifications to the approved Ground Floor Level include:

- Construction of a new seawall and stairs at the eastern extent of the site which will be accessible from Narrabeen Beach; and
- Provision of internal stairs to the basement floor level from Units 1, 3 and 5 (see **Figure 3**).



Approved



Proposed

Source: Bonus and Associates

Figure 3: Approved and Proposed Ground Floor Plan

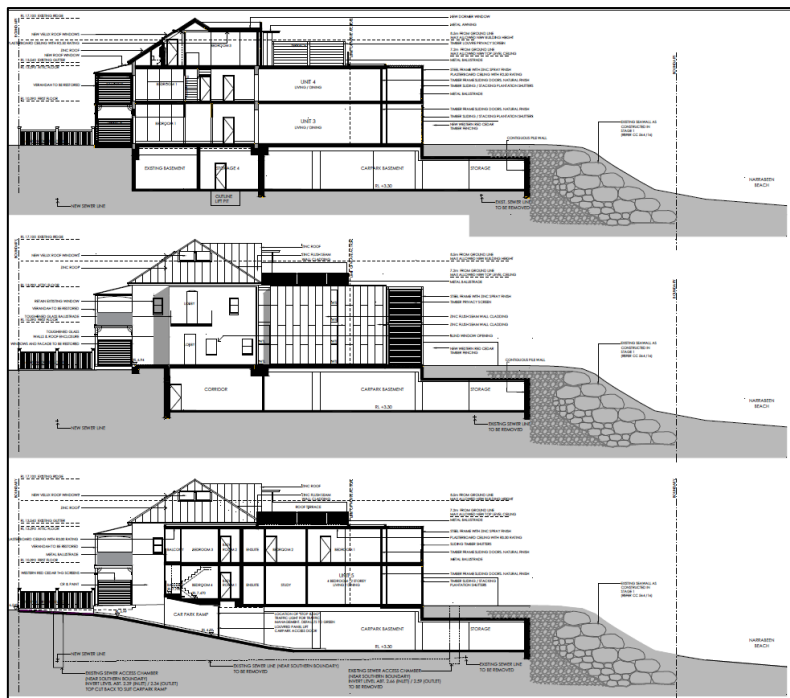
Rationale

The proposal does not alter the streetscape presentation of the approved development. The car parking is appropriate as it will maintain compliance with the DCP requirements.

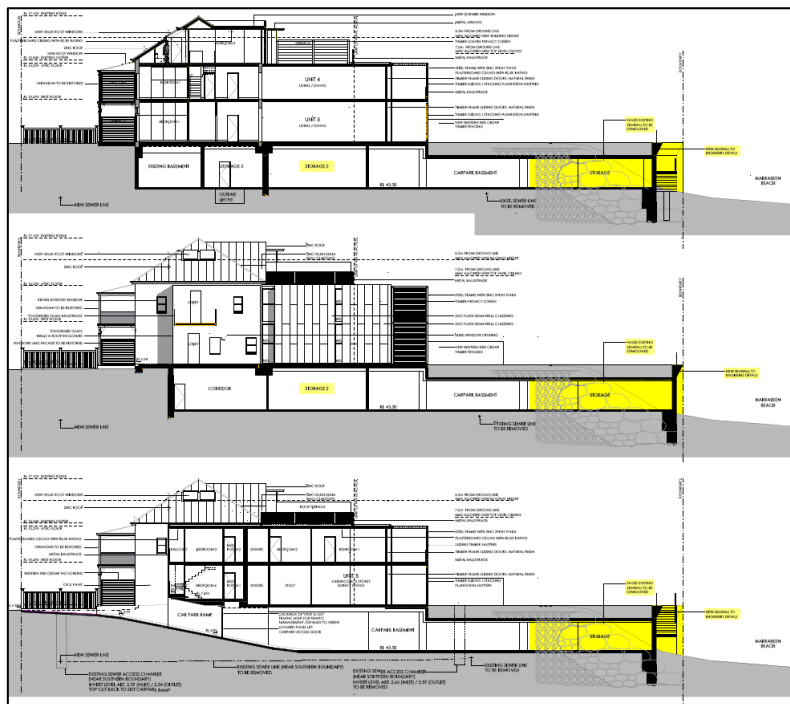
The proposed works are required to remove the existing damaged sea wall and provide a new concrete contiguous pile seawall which is considered to improve the relationship of the proposal with the adjoining developments. The proposed seawall will improve continuity of coastal protection measures in the locality and may reduce coastal risk to adjoining properties (see **Figure 4** on the following page).

The proposal is not likely to have any adverse visual impacts on Narrabeen Beach given that seawalls/coastal risk mitigation are common, given the coastal context of the locality. There is not likely to be any impact on surrounding development as a result of the excavation for the new sea wall as it is similar to the existing approval and contained within a basement level.

In our opinion the proposal will relate well to surrounding developments and is appropriate in this instance.



Approved



Proposed

Source: Bonus and Associates

Figure 4: Approved and Proposed Sections

6.0 ENVIRONMENTAL PLANNING ASSESSMENT

This section deals with the proposal's consistency with the various statutory and non-statutory provisions. It also addresses the relevant matters for consideration under Section 4.15(1)(b) to (e) of the Environmental Planning and Assessment Act 1979 (EP&A Act).

6.1 Warringah Local Environmental Plan (LEP) 2011

The subject site is zoned R2 Low Density under the Warringah Local Environmental Plan (LEP) 2011 (see **Figure 5**) on the following page. The approved residential flat building under DA 2008/1216 is not permitted in the R2 zone.

The matter pertaining to existing use rights was raised in the Council Officers Report for the previous modification (MOD 2018/0604), and concluded the modification to the development consent is lawful under the existing use right provision of the EP&A Act, as stated below:

"The use has been approved under a previous EPI (WLEP 2000) and therefore, as the development consent has not lapsed, the modification to the development consent is lawful under the existing use right provisions of the Environmental planning and Assessment Act, 1979"

Accordingly, the proposed modifications to the approved residential flat building are permitted with consent by virtue of existing use rights.

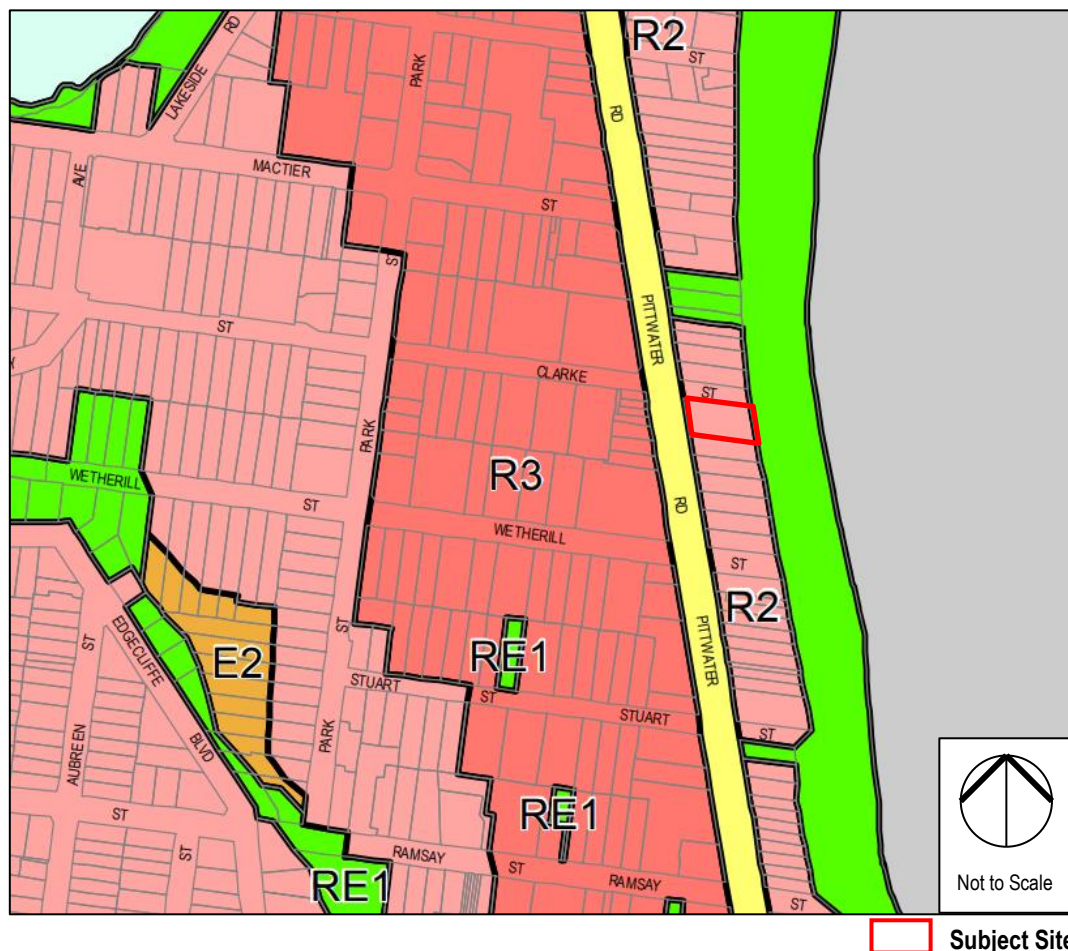


Figure 5: LEP Zoning Plan

A summary of our assessment of the proposed works against the LEP is following (see **Table 1**).

TABLE 1: PROJECT COMPLIANCE – WARRINGAH LEP 2011			
Site Area: 1577m²			
Development Standard	Requirement	Proposal	Complies
Building Height (Max)	8.5m	N/A	The building works proposed in this modification do not alter the approved height of the building.
LEP Provisions			Complies / Comments
Permissibility		R2 Low Density Residential	Yes (Existing Use Rights)
Heritage Item		YES Item I25 - House at 1184-1186 Pittwater Road	The proposed modifications will not have any effects on the existing heritage item. (see Section 6.1.1)
Acid Sulfate Soils		Classes 4 and 5	Yes (see Section 6.1.2)
Earthworks		YES	Yes (see Section 6.1.3)
Development on Sloping Land		YES	Yes (see Section 6.1.4)
Coastline Hazards		YES	Yes (see Section 6.1.5)

6.1.1 Heritage

Clause 5.10 of the LEP relates to heritage items and heritage conservation areas and outlines that the impact of the proposed development in the vicinity of heritage items or within conservation areas shall be considered in the assessment of any proposed development.

A portion of the proposed works in the basement will occur under the existing heritage building, however they pertain to internal modifications to create additional storage area for the units which would not result in any adverse impacts on the heritage item. The proposed excavation within the basement floor level will occur outside the building footprint of the existing heritage item and will extend towards the eastern boundary.

The proposal has been subject to various Heritage studies with Heritage Impact Statements, a Conservation Schedule of Works and a Conservation Management Plan (2006) all having been prepared for the site. Graham Brooks and Associates have reviewed the amended drawings and have provided a concise comment with respect to heritage considerations:

- *The subject site at 1184-1186 Pittwater Road, Narrabeen, is listed as a heritage item in Schedule 5 of the Warringah Local Environmental Plan (LEP) 2011, as an item of local heritage significance.*
- *The proposed relocation and reconstruction of the existing seawall will have no adverse impact on heritage significance of the site as no changes are proposed to the historic building. The additional basement floor space extends away from the building and the new seawall will not be visible from the Pittwater Road streetscape or any significant views.*
- *The proposal is in accordance with the relevant heritage requirements of the Warringah LEP 2011 and the guidelines of the Warringah DCP 2011. The proposal is also in accordance with the relevant policies identified in the 2006 CMP for the subject site.*

Accordingly, the existing building fabric will be retained and unchanged. The appearance of the building in the streetscape will be maintained. Therefore, the proposal will not have any effects on the existing heritage item.

6.1.2 Acid Sulfate

The LEP Acid Sulfate Soils map identifies the Site being subject to Class 4 and Class 5 Acid Sulfate Soils. The proposed excavation within the basement carpark will be greater than 2m, therefore consideration of whether an Acid Sulfate Soil Management is required for the proposed excavation works is necessary.

An Acid Sulfate Soil Assessment has been prepared by Geotechnique Pty Ltd and the results and findings of the assessment have been detailed below:

"Based on test results presented in Table 1 and Action Criteria presented in Table 2, it is our assessment that the soils to be excavated or disturbed are not likely to be acid sulphate or potentially acid sulphate soils. Therefore, an Acid Sulphate Soils Management Plan is not required for the site."

Based on the above findings, the soils on the site are not likely to be acid sulfate or potentially acid sulfate soils. As such, the proposed excavation works do not require the preparation of an Acid Sulfate Management Plan.

6.1.3 Earthworks

The LEP requires the consent authority to consider the effects of earthworks on drainage patterns and soil stability.

A Geotechnical Report has prepared by Geotechnique Pty Ltd, and the findings and recommendations of the investigation have been outlined below:

The investigation encountered sandy material to termination depths. These materials are readily excavated using conventional earthmoving equipment.

Groundwater is considered to be about 3m below proposed bulk excavation level of 3m from existing surface levels and so, we do not anticipate significant groundwater inflow into the excavation. Groundwater inflow, if any, would be adequately handled by a conventional sump and pump system.

Trafficability problems might arise locally during wet weather, or if water is allowed to pond on these materials. Over-excavation by about 300mm and replacement with compacted crushed granular material, such as crushed recycled concrete, is recommended.

The proposed excavation will be undertaken in accordance with the above recommendations and Council's standard conditions of consent to ensure that topographic and scenic impacts are minimised.

6.1.4 Development on Sloping Land

The site is identified within 'Area A' by the LEP Landslip Risk Map. The proposed works will be undertaken in accordance with the recommendations contained in the Geotechnical Report outlined in **Section 6.1.3** above and Council's conditions of consent.

Furthermore, a Stormwater Management Report has been prepared by Woolacotts Consulting engineers to detail stormwater drainage issues associated with the proposed modifications. The proposed stormwater drainage system for the site has been designed in accordance with the recommendations contained in the report.

Accordingly, appropriate management measures have been adopted to minimise risk against landslides and impact on stormwater discharge and subsurface flow conditions.

6.1.5 Coastline Hazards

Clause 6.5 of the LEP requires the consent authority to consider the effects of development on the coastline. The clause states that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied on six matters (a) to (f) related to coastline hazards.

The matters prescribed by Clause 6.5 of the LEP are addressed in the response prepared by Royal Haskoning DHV which concludes the following, inter alia:

The proposed works would not be expected to impact adversely on the adjoining land and properties for a number of reasons:

- *The adjacent properties have existing protection;*
- *The proposed works would tie into the adjacent protection so as to provide contiguous and integrated protection; and,*
- *The proposed works are located landward of the position of the toe and lower section of the existing rock protection works.*

The proposed works would beneficially reduce the risk of coastal erosion at adjacent properties, for some wave directions, by reducing the risk of outflanking.

On this basis, the proposal satisfies the requirements of Clause 6.5 of the LEP and is appropriate in terms of coastal protection.

6.2 State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land

SEPP No. 55 – Remediation of Land was gazetted on 28 August 2005 and applies to the whole of the State. Clause 7(1) requires the consent authority to consider whether land is contaminated prior to the consent of development on that land.

This has been previously considered under DA 2008/1216 which was found to be acceptable by Council. On this basis, further investigation is not considered necessary.

6.3 State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Development

State Environment Planning Policy No 65 - Design Quality of Residential Flat Development was gazetted on 26 July 2002 and applies to the subject site. The SEPP aims to improve the design quality of residential flat development. The Design Code relating to SEPP No 65 states the following, inter alia:

In addition to storage in kitchen, bathrooms and bedrooms, the following storage is provided:

- *Studio Apartments 4m³*
- *One-Bedroom Apartments 6m³*
- *Two-Bedroom Apartments 8m³*
- *Three Plus Bedroom Apartments 10m³*

The proposed development seeks to redesign and relocate the basement carparking level and construct a concrete contiguous pile seawall to the eastern boundary. In this regard, the proposed development, as modified, does not alter or create any changes to the previous assessment of the original development application (Mod 2018/0604) which was found to satisfy the requirements of the nine (9) Design Quality Principles contained in Schedule 1 of SEPP 65 and the matters contained in the Apartment Design Guide, including the provision of storage (372.6m²).

6.4 State Environmental Planning Policy (SEPP) Coastal Management 2018

The site is situated within the Coastal Environment Area and Coastal Use Area under SEPP Coastal Management. Clauses 13 -14 of SEPP Coastal Management must be taken into consideration by a consent authority when it determines a development application to carry out development on land to which the policy relates.

Once again, these matters have been addressed in supporting documentation prepared by Royal Haskoning DHV submitted separately and the proposal is considered to be appropriate in this instance.

6.5 Warringah Development Control Plan (DCP) 2011

The DCP came into force on 09 December 2011 and applies to the site and the proposed development. The proposed modifications generally retain existing levels of compliance with the applicable controls. Our assessment of the DCP control where the proposed modifications result in departure is as follows:

6.5.1 Side Boundary Setbacks

The DCP outlines that a side setback of 0.9m applies to the subject site and that the area within the setback is to be free of underground structures. The basement is proposed to be built to both side boundaries which does not comply with the setback requirement. The approved development (MOD2018/0604) includes the basement level built to the side boundaries and the proposal is consistent with this.

Notwithstanding the above, the development is considered against the underlying Objectives of the Control as follows:

- *To provide opportunities for deep soil landscape areas*
- *To ensure that development does not become visually dominant.*
- *To ensure that the scale and bulk of buildings is minimised.*
- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained*
- *To provide reasonable sharing of views to and from public and private properties.*

The site provides a total of 52% (820.04m²) landscape open space inclusive of areas greater than or equal to 2.0m and a minimum depth of 1.0m, including areas above the basement carpark. Accordingly, the site will retain an appropriate landscape setting capable of supporting lawn and small to medium sized trees.

The non-compliance is located below ground level which would not result in an increase in the envelope of the approved development, nor would it result in visual dominance. Importantly, the areas of non-compliance do not translate into unreasonable external impacts for adjoining and surrounding neighbours in terms of overshadowing, privacy, visual outlook and view loss.

The proposed excavation work will be undertaken in accordance with the Geotechnical Report prepared for the proposal, and this is discussed in the section below. Furthermore, there is not likely to be any impact on the coastal interface as a result of the proposed sea wall. In our opinion, the side setbacks as proposed are appropriate in this instance.

6.5.2 Rear Setbacks

The DCP specifies a 6m rear setback requirement for the subject site. While the proposed basement excavation breaches the 6m setback requirement, it is considered sensible to make use of the contiguous pile seawall to form the seaward basement wall, as otherwise two walls would be required. This has led to an increase in the basement area, while maintaining the FSR, height, bulk and density of development.

For the purpose of clarity, the contiguous pile seawall is necessary as the existing seawall has failed and requires replacement. The proposed sea wall matches the existing seawall constructed to the seaward boundary of the adjoining land. Hence the revetment rock sea wall (which has failed) is proposed to be replaced with a contiguous pile seawall.

Notwithstanding the above, the extent is considered against the underlying objectives of the control as follows:

- *To ensure opportunities for deep soil landscape areas are maintained.*
- *To create a sense of openness in rear yards.*
- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*
- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*
- *To provide opportunities to maintain privacy between dwellings.*

As the proposal pertains to the basement level, it will preserve the sense of openness in the rear yards and the amenity of adjacent land. With respect to deep soil landscaping, the landscaped areas over the basement level have a depth of 1m which is capable of accommodating mature landscaping. As mentioned, the proposal comprises a total of 52% (820.04m²) of landscaped open space which complies with the 40% DCP requirement and in our opinion is acceptable in this instance.

Accordingly, in our opinion, the rear setback as proposed is appropriate in this instance.

6.5.3 Excavation

The DCP contains various controls relating to excavation which primarily relate to minimising potential impact. The proposed excavation relates to the provision of a concrete contiguous pile seawall to the eastern boundary. A Geotechnical Report has been prepared by Geotechnique Pty Ltd in support of the proposal.

This report outlines that the assessments and recommendations for the proposal. It is our opinion, based on the Geotechnical Report, that the proposal is appropriate in this instance and will not result in any unreasonable impact upon adjoining properties.

6.5.4 Landscaping

On the subject site, the DCP requires 40% of the site area to be landscaped open space. In order to be included in this calculation, there must be a soil depth of at least 1m. The landscaped areas over the basement level have a depth of 1m and therefore are included in this instance. The proposal comprises a total of 52% (820.04m²) of landscaped open space which complies with the 40% requirement and in our opinion is acceptable in this instance.

6.5.5 Carparking

Appendix 1 of DCP requires car parking to be provided at the following rate:

Apartment style housing –

- *1 space per 1 bedroom unit,*

- 1.2 spaces per 2 bedroom unit,
- 1.5 spaces per 3 bedroom unit and
- 1 visitor space per 5 units or part of units.

Base on five (5) x three-bedroom units, the development requires 7.5 residential spaces and 2 visitor spaces. A total of 10 car spaces are therefore required.

The proposed development was previously approved with 13 car spaces under MOD2018/0604. The proposal provides 9 resident spaces and 2 visitor spaces resulting in a total of 11 car parking spaces. Therefore, the proposed development, as modified, complies with the carparking requirements of the DCP.

6.5.6 Building Colours and Materials

The proposed sea wall will match the colour and finish of the adjoining seawall south of the subject site at No. 1182 Pittwater Road. As such, the proposal will complement the appearance of the neighbouring development. Notwithstanding, this can be enforced via a condition of consent.

7.0 PLANNING ASSESSMENT

7.1 Appearance of the Building and Landscape Considerations

As outlined, the proposal will not result in any alteration to the existing building. The relocated car parking will be confined to below ground and the new seawall will not adversely impact the appearance of the subject site.

Importantly, the site will retain a compliant amount of landscaping which is capable of supporting lawn and small to medium sized trees.

7.2 Relationship to Surrounding Development

The proposed modifications have been designed to maintain visual and acoustic privacy, solar access and views from neighbouring developments.

The proposed amendments are considered to improve the relationship of the proposal with the adjoining developments. As outlined, the seawall will improve continuity of coastal protection measures in the locality and may reduce coastal risk to adjoining properties.

The proposal is not likely to have any adverse visual impacts on Narrabeen Beach given that seawalls/coastal risk mitigation are common, given the coastal context of the locality. There is not likely to be any impact on surrounding development as a result of the excavation for the new sea wall as it is similar to the existing approval and contained within a basement level. In our opinion the proposal will relate well to surrounding developments and is appropriate in this instance.

In our opinion, the proposed modifications have been thoughtfully designed to maintain approved levels of amenity for neighbouring development.

7.3 The Suitability of the Site

As the modifications do not alter the intensity of the development on site, the traffic generation will not change from that of the approved development. Accordingly, the traffic to be generated by the proposed development is not likely to have an impact on the level of service, capacity and function of nearby intersections.

The proposal complies with the number of car spaces which are simply being relocated to a different location on site. The proposed car parking has been designed in accordance with Australian Standard AS 2890 and complies with the requirements of this standard. Given the consistency of traffic and parking considerations with the previous approval, it is our opinion that the proposal is appropriate in this instance.

7.4 The Public Interest

As outlined throughout this report, the proposal does not alter the streetscape presentation of the approved development. The alterations are contained to below ground level and toward the rear of the site. The car parking is appropriate as it will maintain compliance with the DCP requirements. The seawall is appropriate as it affords greater protection to the subject site, and adjoining allotments. In our opinion, the proposal is in the public interest.

8.0 CONCLUSION

The proposed modifications include minor internal modifications to the previously proposed Residential Flat Building, which is within the approved building envelope. Accordingly, we respectfully request that Council amend Condition 1A and Condition 80 of DA No. 1216/2008. It is supported by amended architectural plans prepared by Bonus and Associates.

This letter demonstrates the proposal is substantially the same as the approval. The proposed modifications have been considered both qualitatively and quantitatively, as requested, with reference to two Land and Environment Court cases relating to modifications to consent. We noted Section 4.55 Modification applications with a greater degree of change and impact have been approved by other NSW Councils and the Land and Environment Court.

The proposed modifications will not alter the approved building envelope, nor will it alter the appearance of the building and it is not likely to adversely affect the amenity of the surrounding residences. In addition, the proposal continues to provide a compliant number of car parking spaces and improves coastal protection arrangements for the subject site. Council can be satisfied that the proposed modifications to development consent DA No. 1216/2008 can be assessed as a Section 4.55 modification to consent.

We trust this information is of assistance to you. Should you require further information, please do not hesitate to contact our office on (02) 9362 3364.

Yours faithfully,



George Karavanas
MANAGING DIRECTOR

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