

8 November 2021  
Our Ref: 20768B.9DK\_s4.55\_1A\_Mod#2



planning consultants

Northern Beaches Council  
PO Box 82  
MANLY NSW 1655

Dear Sir,

**RE: SECTION 4.55(1A) APPLICATION TO MODIFY  
DEVELOPMENT CONSENT No. DA2020/0579 (AS MODIFIED)  
25-27 WARRIEWOOD ROAD, WARRIEWOOD**

### 1.0 Introduction

DFP has been commissioned by J & G Knowles & Associates to prepare an application under section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify development consent No. DA 2020/0579 (as modified on 20 May 2021) issued on 16 November 2020 for the construction of a residential flat building, semi-detached dwellings, dwelling house and community title subdivision and including internal private road.

The section 4.55(1A) application seeks to modify the approved development as follows:

- To provide an external platform lift to Adaptable Dwellings 1 and 2 (facing Warriewood Road) to satisfy access requirements of the Building Code of Australia (BCA) and the Commonwealth Disability Discrimination (DDA) Act, 1992.
- To amend the street entry location into Adaptable Dwelling 11 from Warriewood Road to Lorikeet Grove to provide access to satisfy the requirements of the BCA and the DDA.
- To amend the landscaping and pathways in the common landscaped area over the Sydney Water easement to satisfy Sydney Water's requirements and the provide permeable paving in the side setbacks to the dwellings fronting Warriewood Road.
- To amend the approved subdivision plans to reflect the platform lift in Adaptable Dwellings 1 and 2.
- Condition 3 - *Approved Plans and Supporting Documentation and Staged Construction and Occupation* will need to be amended to reflect the date of the amended plans.

**Section 3.0** of this submission describes the proposed design modifications in more detail.

This planning report has been prepared by DFP based on the information listed below. The documentation listed below are those documents submitted with the modification application and have been uploaded to the NSW Planning Portal:

1. Amended Architectural Plans prepared by VIA Architects.
2. Amended Landscape Plan prepared by CDA Design Group.
3. Amended stormwater plans prepared by SGC Engineering (**Note:** the stormwater design has not changed. The plans have been amended solely to incorporate the architectural background showing the amended pathways and platform lift).
4. Amended subdivision plans prepared by Survey Plus.

5. Current BASIX Certificates submitted with the original DA.
6. Compliance Statement prepared by 3D Access (and the original Access Performance Solution Report prepared by 3D Access is also uploaded to the NSW Planning Portal).

This letter has been prepared in support of the section 4.55(1A) application and includes the information necessary for Council to assess and determine the application.

We have concluded that the proposed modifications will result in a development that is substantially the same as the approved development and will have minimal environmental impact and accordingly, the proposal is considered to satisfy the requirements to enable these modifications to be approved by Council pursuant to s4.55(1A) of the EP&A Act.

## 2.0 Background

On 16 November 2020 the Sydney North Planning Panel (Panel) granted a deferred commencement consent to Development Application No. DA2020/0579 for the construction of a residential flat building, semi-detached dwellings, dwelling house and community title subdivision and including internal private road at 25-27 Warriewood Road, Warriewood.

Council confirmed by letter dated 11 February 2021 that the consent is operative and that the consent will operate from 11 February 2021.

On 20 May 2021 Council approved a modification to amend conditions in relation to the subdivision works certificate, tanking of the basement, minor amendments to the building and landscaping.

## 3.0 Proposed Modifications

The proposed modifications are described below and the location of proposed design amendments are highlighted in **Figure 1**.

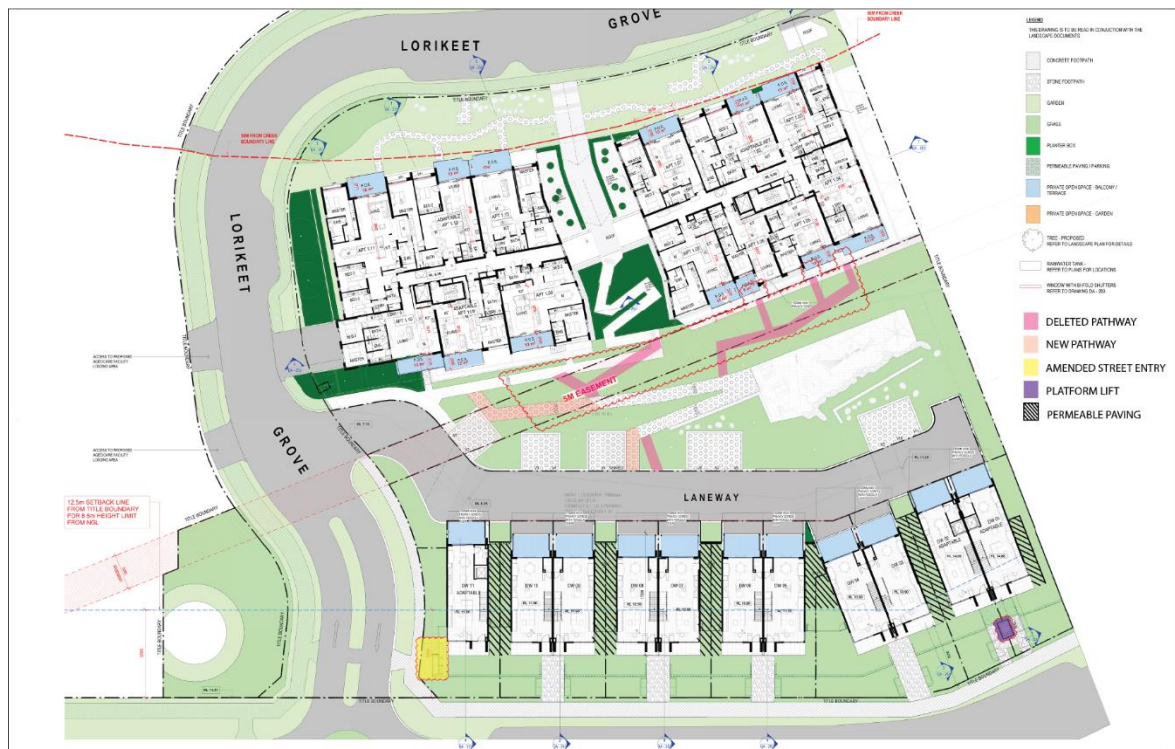


Figure 1 Extract from architectural plan showing the location of design amendments

### **3.1 External Platform Lift to Dwelling 1 and 2 (facing Warriewood Road)**

During the preparation of construction certificate documentation it became apparent that the pedestrian access to Dwellings 1 and 2 (adaptable dwellings) required amendment to comply with Condition 28 of the consent and the requirements under the Commonwealth Disability Discrimination (DDA) Act, 1992. This is proposed to be achieved by installing a platform lift to the northern most dwellings facing Warriewood Road (Townhouses 1 and 2).

### **3.2 Modification to Plan of Subdivision**

The platform lift will be shared between Dwellings 1 and 2 (Lots 4 and 5). Because the platform lift is shared between Lots 4 and 5 it will form part of the community association property (Lot 1) as it will become common property for the community title subdivision. The approved plan of subdivision is proposed to be amended accordingly (Refer sheets 1, 4, 5 and 6).

### **3.3 Amend street entry design Adaptable Dwelling 11**

As per **Section 3.1** above, it has also become necessary to achieve DDA compliant access from the street to Townhouse 11 which is another adaptable dwelling located at the corner of Warriewood Road and Lorikeet Grove. Access to this dwelling will be achieved by relocating the pedestrian access from Warriewood Road to Lorikeet Grove. This avoids the need for another platform lift. The bin enclosure to this dwelling is also relocated to the new pedestrian access.

### **3.4 Amend landscaping treatment over Sydney Water Easement**

Sydney Water has been consulted during the preparation of construction certificate documentation as per Condition 32 of the consent. Sydney Water has advised that some of the 'hard' landscaping over the Sydney Water easement is to be relocated. This has resulted in the following design amendments which are represented in **Figure 1**

- The pathways providing individual pedestrian access to Apartments G.04, G.05 and G.06 have been removed. The fence line to the courtyards to these apartments has been moved to the top of the retaining wall in each courtyard and outside of the Sydney Water easement. The steps leading down into each courtyard have also been removed.
- The zig zag path leading from between the two apartment buildings has a small overlap within the Sydney Water easement. Connectivity is retained by using the approved path in front of Apartments G.07 and G.08 and a new connection is provided to the playground.

### **3.5 Amended Landscape Treatment in Side Setbacks to Dwellings 1 – 11**

The approved landscape plans nominated garden in the side setbacks of each of the dwellings fronting Warriewood Road. This treatment is proposed to be amended to provide permeable paving which is a more practical treatment given the narrow spaces and the service function these spaces will provide. The permeable paving treatment is consistent with the intent of the 41% landscaped area requirement (which stems from an earlier consent – DA N0611/16 for the residential care facility) as the water quality targets of the approved development are still achieved.

### 3.6 Modification to the Consent

In light of the above modifications the consent is proposed to be modified as follows:

- Condition 3A is to be updated to reflect the amended architectural, landscape, civil and subdivision plans submitted with this application

### 4.0 Statutory Provisions

Section 4.55 of the EP&A Act contains the provisions that must be considered by Council in determining an application to modify a Notice of Determination. In this regard, the relevant section is s4.55(1A) of the EP&A Act.

This application is lodged under s4.55(1A) as the proposed modifications are considered to be minor in nature and will have only minimal environmental impact (see **Section 5.0**).

In addition to the EP&A Act, Clause 115 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) contains the information that must be submitted with an application to modify a consent. The requirements under the EP&A Act and EP&A Regulation are detailed below.

#### 4.1 Section 4.55(1A) of the Act

Section 4.55(1A) of the Act applies to modifications where a minimal environmental impact may occur. Specifically, section 4.55(1A) provides that a number of matters be addressed, as discussed below:

***“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”***

The modified pathways remove the common path and individual access to the courtyards of three ground floor dwellings in the apartment building. This amendment results in less paved area in the central open space. The connectivity from the apartments buildings through the central open space will remain. The amendments to the pedestrian paths have minimal environmental impact.

Whilst direct access to the ground floor apartments is removed, access to the common open space can still be achieved via the corridor and zig zag path (i.e. the same for all other dwellings). This amendment is of minimal environmental impact.

The relocation of the fence line shifts part of the courtyard landscaping to the central open space. This does not affect the amenity of those courtyards as the landscaped area has been approved at about 1m above the main courtyard (private open space) and was therefore not directly accessible from the useable or functional part of the private open space. The functional part of the private open space of Apartments G.04, G.05 and G.06 maintains the same overall dimensions. The location of the stairs is now garden area to the courtyard. Because the minimum dimension of the functional part of private open space to Apartments G.04, G.05 and G.06 has not changed, the modification is therefore considered to have minimal environmental impact.

The modification to incorporate a platform lift for Adaptable Dwellings 1 and 2, relocate the pedestrian entry for Adaptable Dwelling 11 and change the garden bed treatment in the side setbacks to Dwellings 1 to 11 to permeable paving are minor. These design modifications do not substantially change the presentation of the development from the street and the front

setback landscaped outcome is retained. The overall landscaped area, deep soil area and impermeable areas are also retained. Importantly, the requirement for 41% landscaped area (which stems from an earlier consent – DA N0611/16 for the residential care facility) is still achieved and therefore the water quality targets of the approved development are maintained. For these reasons the amendments are considered to be of minimal environmental impact.

***“(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)”***

The modifications to the building and landscaping do not change the development as originally approved. The modifications are minor detailed design matters and the development remains that of a residential flat building, semi-detached dwellings and a dwelling in a landscape setting with common open space. The approved form of community title subdivision is also unchanged. For these reasons the proposed modifications are considered to result in a development that is substantially the same as the development for which consent was originally granted.

***“(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 modifications of a development consent,”***

Section A5.1 of Pittwater 21 Development Control Plan (DCP) provides Council staff with the discretion to not notify an application which is of a minor nature and impact. The application meets the requirements of this control of the DCP and Council may therefore decide not to notify the modification application.

Should Council form a different opinion, then the modification application will need to be notified in accordance with Section A5.1 of Pittwater 21 DCP.

***“(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”***

Should Council notify the subject application in accordance with section 4.55(1A)(c), it must consider any submissions made during a notification period.

Subsections (1) and (2) of section 4.55 do not apply to the proposed modification. Subsection (3) is addressed in **Section 5.0** of this submission.

#### **4.2 Clause 115 of the EP&A Regulation 2000**

Subclause 115(1) of the Regulation details the information required to be submitted with an application to modify a Development Consent under section 4.55. These details are contained in this letter and the on-line application form.

Subclause 115(3) of the regulations requires that if an application for the modification under section 4.55(2) or section 4.56 (1) of the EP&A Act relates to residential apartment development and the development application was required to be accompanied by a design verification from a qualified designer under clause 50 (1A) of the regulations, then the application must be accompanied by a statement by a qualified designer. This modification application is lodged under s4.55(1A) and accordingly, a design verification statement is not required and subclauses (3), (3A) and (3B) of cl115 do not apply to the proposed modification.



Subclause 115(6) requires if the application for modification relates to development for which the development application was required to be or was accompanied by a BASIX certificate/s, the application for modification must also be accompanied by the appropriate BASIX certificate/s. Subclause 115(7) provides that the 'appropriate BASIX certificate' for the purposes of subclause (6) is (emphasis added):

*(a) if the current BASIX certificate remains consistent with the proposed development, the current BASIX certificate, and*

*(b) if the current BASIX certificate is no longer consistent with the proposed development, a new BASIX certificate to replace the current BASIX certificate.*

The proposed development remains consistent with the approved development as the modifications relate to elements external to the dwellings (fencing, landscaping and a platform lift). The current BASIX certificate is therefore resubmitted with the application as required by clause 115(7) of the Regulation.

In accordance with subclause 115A, the relevant fee prescribed under Part 15 of the Regulation will be paid upon notification through the Planning Portal.

## **5.0 Environmental Planning Assessment**

Section 4.55(3) of the EP&A Act requires that such of the matters referred to in section 4.15(1) as are of relevance to the proposed modification must be taken into consideration in determining the application for modification.

In addition, 4.55(3) requires the consent authority to take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

Accordingly, the following subsections provide an assessment of any such relevant matters.

### **5.1 Section 4.15(1)(a) – Planning Controls**

#### **5.1.1 Pittwater Local Environmental Plan 2014**

The site is located in the R3 Medium density residential zone. The approved development remains permissible with consent in the R3 zone. The proposed modifications do not change the consistency of the approved development against the zone objectives of the R3 zone.

There are no provisions of the LEP that are directly relevant to the proposed modifications.

#### **5.1.2 State Environmental Planning Policies (SEPPs)**

The following SEPPs were addressed as part of the assessment of the original DA.

- SEPP (Infrastructure) 2007. There are no provisions of the SEPP directly relevant to the proposed modifications.
- SEPP (Building Sustainability Index: BASIX) 2004 has been addressed above and the amendments do not affect the dwellings and therefore the BASIX affected buildings.
- SEPP (Coastal Management) 2018. There are no provisions of the SEPP directly relevant to the proposed modifications.
- SEPP No. 65. Design Quality of Residential Flat Development.
  - There are no amendments to the dwellings of the residential flat building.

- The contiguous area of the courtyards to G.04, G.05 and G.06 retain their minimum approved depth. The only change is shifting the fence line to the courtyards of these dwellings such that the elevated garden bed will now form part of the central open space, not the courtyard. This does not change the functionality of the courtyards and the Apartment Design Guide objectives are still achieved.

### 5.1.3 Pittwater 21 Development Control Plan

The following discussion provides assessment or commentary (as applicable) against the relevant provisions of the DCP.

#### Section A – Shaping Development in Pittwater

The notification provisions of the DCP have been discussed in **Section 4.1** of this planning report. The built form of the development remains substantially unchanged from that originally approved and the built form controls are therefore not re-assessed.

#### Section B – General Controls

The controls relating to heritage, density, hazards, the natural environment, vehicular access and parking and site works management are all unaffected by the proposed modifications.

#### Section C – Development Type Controls

The approved development was assessed against Section C1 - Design Criteria for Residential Development.

The approved built form of the development is not proposed to be modified. These controls are therefore not applicable to the modification.

The approved development was also assessed under Section C6 – Design Criteria for the Warriewood Valley Release Area. Relevant provisions are discussed below.

- Section C1.9 – Adaptable Housing and Accessibility. The approved development provides the required number of adaptable dwellings as per section C1.9 of the DCP. Condition 28 of the consent requires as follows:

*Prior to the issuance of the construction certificates for Stage 2 and 3, a suitably qualified accessibility consultant is to provide written certification to the certifying authority that all adaptable dwellings (and access thereto) have been designed to meet the Class B requirements of AS4299:1995 Adaptable Housing.*

As part of the construction certificate documentation, the Access Consultant (3D Access) required amendments to the pedestrian access to the adaptable dwellings and this application proposes modifications includes a platform lift to Adaptable Dwellings 1 and 2 and revised entry to Adaptable Dwelling 11.

3D Access has reviewed the modified plans and prepared a Compliance Statement confirming that the amended design demonstrates compliance with Adaptable Housing (AS 4299 – 1995). A copy of the Access Performance Solution Report (submitted with the recently approved modification application) prepared by 3D Access and the Compliance Statement have been submitted with this application.

- Section C1.12 – Waste and Recycling Facilities. The relocation of the pedestrian entrance for Dwelling No. 11 also involves relocating the waste bin storage area. This is integrated into the courtyard wall facing Lorikeet Grove and bins can accessed from within the courtyard and will therefore not be visible from the public domain.
- Section C1.19 – Incline Passenger Lifts. The platform lift for Dwellings 1 and 2 is not a passenger incline lift, but the provisions have nevertheless been considered. There is no

excavation required for the lifts as the level changes have been approved. The platform lift does is not covered and only has a balustrade around the platform for safety reasons (refer DA200 – North elevation) It will therefore have minimal visibility in the streetscape. The lift is located 8m from the adjoining boundary and does not give rise to any greater opportunity for overlooking than the entrance path and stairs and the proposed landscaping to the east will screen views (as per the approved plan).

- Section C6.7 – Landscaped Area (Sector, Buffer Area or Development Site). The assessment report for DA N0611/16 noted that Lot 2 (being the lot on which the subject development is located) is to be provided with a restriction on title requiring a minimum 41% of the site area to be provided as landscaped area. The proposed amendments to the landscape design do not reduce the total landscaped area and the 41% requirement is still achieved.

### Section D – Locality Specific Development Controls

Section D16 – Warriewood Valley Locality applies to the site. The following provisions are of most relevance to the proposed modification:

- Section D16.10 – Private and Communal Open Space. Whilst the fence line to the courtyards of G.04, G.05 and G.06 has shifted to the top of the retaining wall, the courtyard sizes remain unchanged from the approved DA (as modified).

The courtyard sizes as approved were 36m<sup>2</sup>, 16m<sup>2</sup> and 17m<sup>2</sup> and remain the same. This is because the landscaped garden bed on top of the sewer easement was not included in the original courtyard area calculation. The courtyards sizes remain as approved and consistent with Section D16.10 of the DCP.

- Section 16.5 – Landscaped Area for Newly Created Individual Lots. The approved development resulted in the landscaped area for the lots less than 9m wide fronting Warriewood Road being slightly less than the 25% landscaped area control of the DCP. The landscaped area to the front courtyard of Dwellings 1, 2 and 11 will change slightly with the amendments. The percentage landscaped area for these dwellings / lots as set out in Drawing DA053 (approved and amended) is set out below.

Dwelling	Approved		Modified	
	Area (m <sup>2</sup> )	Percentage	Area (m <sup>2</sup> )	Percentage
1 (aka Title 4)	111m <sup>2</sup>	46%	108m <sup>2</sup>	45%
2 (aka Title 5)	47m <sup>2</sup>	23.5%	42m <sup>2</sup>	21%
11 (aka Title 14)	129m <sup>2</sup>	50.1%	124.5m <sup>2</sup>	48.4%

Dwellings 1 and 11 still achieve the minimum 25%. Dwelling 2 has a slight reduction of 5m<sup>2</sup> in landscaped area due to incorporating the platform lift. In terms of the Outcomes of the DCP control, the amendment does not affect the natural features of the site, the landscape character of the development, stormwater outcomes, deep soil zone in the front setback is still achieved for canopy tree planting and privacy of the dwellings / courtyards is not affected. The Outcomes of the DCP control can still be achieved. The variation is minor and does not affect the functionality of the courtyard space for the occupants of the dwelling.

## 5.2 Section 4.15(1)(b) – Natural and Built Environmental Impacts

### 5.2.1 Landscape Outcome

The proposed platform lift for Dwellings 1 and 2 and the amended entry arrangement for Dwelling 11 have very minor impacts on the landscape outcome for the courtyards of those dwellings. Whilst the area changes marginally, the landscape treatment and deep soil planting areas in the front setback zone are unchanged.



The amendment of the garden beds in the side setback between Dwellings 1 to 11 to permeable paving is a more practical treatment for these narrow spaces. The approved garden beds would have been constrained in terms of planting options and most likely confined to grass. The amendment of these spaces to permeable will also have no impact on the overall landscape outcome and the spaces would not have contributed to a landscape setting that would have been apparent from the public domain.

The overall landscaped area is not reduced (as confirmed by Drawing SW 500 in the amended stormwater set of plans) and the modified development will continue to satisfy the requirement for a 41% landscaped area of DA N0611/16 (for the residential care facility), which is also reflected as a restriction on title, is still achieved. The landscape outcome of the development is not adversely affected by the proposed modifications.

### **5.2.2 Platform lift**

The platform lift is a structure that is level with the finished ground level of the entry path to each dwelling. The only elements visible will be the glazed gates around the lift platform (which is necessary for safety reasons). The gates/balustrade will be no higher than bin enclosures in each front courtyard and because it is setback about 2.7m from the front boundary will not be a dominant element in the streetscape.

### **5.2.3 Stormwater Outcome**

The stormwater plans prepared by SGC have been updated to incorporate the amended architectural background (i.e. amended path locations and platform lift). There are no changes to the stormwater design. The MUSIC model is unaffected by the proposed amendments as the 41% landscaped area requirement of DA N0611/16 and the restriction on title is still achieved.

### **5.3 Section 4.15(1)(b) – Social and Economic Impacts**

There are not considered to be any relevant or adverse social or economic impacts arising as a consequence of the staged construction.

The provision of accessible entries to the adaptable dwellings is considered to be a positive social outcome.

### **5.4 Section 4.15(1)(c) – Suitability of the Site for Development**

The proposed modifications do not alter the suitability of the site for the development. The modified access arrangements are designed to address the change in topography to ensure equitable access for the adaptable dwellings is available from Warriewood Road (with access previously approved via the laneway). The solutions to achieve equitable access are simple and non-intrusive and do not alter the suitability of the site for the development.

The changes to the landscape details over the Sydney Water easement are minor and do not affect the overall landscape outcome or functionality of the open space area.

### **5.5 Section 4.15(1)(d) – Submissions**

Should Council notify the subject application in accordance with section 4.55(1A)(c), it must consider any submissions made during a notification period.

### **5.6 Section 4.15(1)(e) – Public Interest**

The proposed modifications will still enable the development to achieve the objectives of the R3 zone which reflect the public interest. There are no other public interest matters that are considered to arise as a consequence of the proposed modification.

## 5.7 Reasons for the Grant of the Consent

In determining DA the Sydney North Planning Panel provided the following reasons why consent was granted:

*“The Panel determined to approve the application for the reasons outlined below and in the Council assessment report.*

*The site is zoned R3 Medium Density Residential under the provisions of Pittwater Local Environmental Plan 2014 (PLEP 2014), and the proposed development is permissible with consent. The Panel concurs with Council’s assessment that the proposed mixed use residential development is well resolved, with well-articulated built form, generous landscaped areas and a variety of materials and textures that will blend with the proposed landscape solution.*

*The proposal would provide good amenity for future occupants of the proposed dwellings commensurate with that its surrounding properties and the proposal is considered to be an appropriate contextual fit for the site, within the Warriewood Valley Release Area.*

*Whilst the proposed residential flat buildings do not meet the minimum solar access requirements of the ADG and P21 DCP, the development is sited and designed to provide adequate sunlight, daylight and ventilation to habitable rooms during midwinter. As such the proposal is consistent with the outcomes of the solar access development control and the proposal is acceptable despite technical noncompliance in this regard.*

*Given Council’s merit assessment of the development the Panel concurs the proposal is consistent with the objectives of the DCP, zone objectives and aims of the LEP, the objectives of the relevant EPIs and with the objectives of the Environmental Planning And Assessment Act 1979 and approval of the proposal would be in the public interest.”*

The proposed modifications do not alter the built form or the design outcome of the landscaped areas. The amenity for the occupants is retained and unchanged from the approved development. The modified development is considered to maintain consistency with the objectives of the Pittwater 21 DCP and the zone objectives and aims of the LEP in the same manner as the approved development. Accordingly, the proposed modifications do not offend any of the reasons for the original granting of consent.

## 6.0 Conclusion and Recommendations

This submission accompanies an application under section 4.55(1A) of the EP&A Act to modify DA2020/0579 (as modified). The proposal involves minor modifications to incorporate accessible entries for the 3 adaptable dwelling for DDA compliance. Minor amendments are also made to the landscape treatment of the central open space area over the sewer easement to comply with Sydney Water requirements.

The modifications will result in a modified development that is substantially the same as the development as originally approved and the proposed modifications will have minimal environmental impact. Accordingly, the proposal is considered to satisfy the requirements pursuant to s4.55(1A) of the EP&A Act.

Accordingly, we are of the view that the proposed modification is acceptable in this particular instance and can be approved under section 4.55(1A).



We would be pleased to discuss this application further with Council officers should that be required and if you have any queries, please contact David Kettle from our office.

Yours faithfully

**DFP PLANNING PTY LTD**

A handwritten signature in black ink, appearing to read 'D. Kettle'.

**DAVID KETTLE  
DIRECTOR**

dkettle@dfpplanning.com.au

Reviewed: \_\_\_\_\_

A handwritten signature in black ink, appearing to read 'E. R. H.'.

Documents submitted with the application

1. Owners Consent
2. ASIC company extract
3. Amended Architectural Plans prepared by VIA Architects
4. Amended Landscape Plan prepared by CDA Design Group
5. Amended Stormwater Plans prepared by SGC Engineering.
6. Amended Subdivision Plans
7. Current BASIX certificates submitted as part of the original DA.
8. Access Performance Solution Report (submitted with the recently approved modification application) dated 22 December 2020 prepared by 3D Access and forming part of the approved documentation
9. Compliance Statement prepared by 3D Access