



NSLPP MEETING HELD ON 04/10/23

Attachments:

1. Site Plan
2. Architectural Plans
3. Judgment Aidop No.3 Pty Ltd ATF Aidop No.3 Unit Trust v North Sydney Council [2022] NSWLEC 1662
4. Landscape Plan & Landscape Design Statement
5. DA86/2022 – Approved Plans

ADDRESS:	96-98 Ben Boyd Road, Neutral Bay
APPLICATION No:	DA 86/2022/02
PROPOSAL:	Section 4.56 modification relating to development consent DA 86/2022 for consolidation of 2 lots, demolition of existing structures, excavation and construction of a six-storey residential flat building containing 21 apartments over two levels of basement parking and parking at grade, landscaping and associated works at 96-98 Ben Boyd Road, Neutral Bay.
MODIFICATION:	Changes to basement, services and plant rooms, basement parking, convert two storey apartments to single storey, internal layout changes, relocate communal room and entry stair, changes to platform lift and landscape terrace
PLANS REF:	Refer to Attachment 2 - Architectural Plans
OWNER:	Barbara Nancy Hazell (96 Ben Boyd Road) & Props of SP 61709 (98 Ben Boyd Road)
APPLICANT:	The Trustee for Aidop No.3 Unit Trust
AUTHOR:	Planning Ingenuity – Consultant Planner & Thomas Holman – Assessment Officer
DATE OF REPORT:	22 August 2023 (Updated 13 September 2023)
DATE LODGED:	28 April 2023
SUBMISSIONS:	None
RECOMMENDATION:	Approval

EXECUTIVE SUMMARY

This application made under Section 4.56 of the *Environmental Planning and Assessment Act 1979* seeks consent to modify development consent DA86/2022. The consent originally granted by the Land and Environment Court was for consolidation of 2 lots, demolition of existing structures, excavation and construction of a six-storey residential flat building containing 21 apartments over two levels of basement parking and parking at grade, landscaping and associated works at 96-98 Ben Boyd Road, Neutral Bay.

The application is reported to the North Sydney Local Planning Panel for determination as the application relates to a s4.56 modification which involves maintaining and altering parts of the building envelope (south/southern eastern corner of the building) which is a variation to a development standard for maximum building height of 12m by more than 10% and the development relates to a SEPP 65 residential apartment development. The application is reported to the North Sydney Local Planning Panel in accordance with the Ministers Direction “Local Planning Panel Direction – Development Applications” dated 30 June 2020, published to the NSW Planning Portal.

The proposed modifications include alterations to the eaves of the roof and alterations to rooftop plant and equipment as well as the addition of plant equipment adjacent to the lift overruns that are seeking variations to the height of building development standard in Clause 4.3 in NSLEP 2013. The modifications have been considered having regard to the reason for approval of the original application and have been assessed having regard to the objectives of the development standard itself. The proposed modifications are consistent with the objectives given that the variations would not substantively alter the bulk and scale of the approved development and would not give rise to any additional material impacts on the amenity of the surrounding properties or the character of the area.

The proposed modifications are consistent with the approved development and primarily involve improvements to the layout and function of the apartments, some of which have arisen through the detailed construction documentation for the development which often occurs during the preparation of the construction certification.

The application has been notified in accordance with Council’s Community Consultation Plan with adjoining properties and the Neutral Precinct notified between 12 May to 26 May 2023. In response to the notification Council received no submissions to the proposal.

Following this assessment, the proposed modification application subject to conditions of consent including conditions relating to the indoor communal room and size of balconies is considered to be reasonable and will result in substantially the same development outcomes as the originally approved development and the modification is recommended for **approval** subject to conditions.

DESCRIPTION OF PROPOSAL

This application made under s4.56 of the Act seeks consent to modify development consent DA 86/2022 relating to the original approval of consolidation of 2 lots, demolition of existing structures, excavation and construction of a six-storey residential flat building containing 20 apartments over two levels of basement parking and parking at grade, landscaping and associated works at No.96-98 Ben Boyd Road, Neutral Bay (Lot A DP 348364 and SP 61709).

The proposed modification is summarised by the applicant as:

- One less apartment in total – 20 apartments
- Three less car parking spaces
- No change to the maximum building height
- Alterations to the apartment storage within basement levels
- Alterations to the layout of the apartment floorplans
- Two (2) additional 2-bedroom apartments and three (3) less 3-bedroom apartments to improve apartment diversity
- Deletion of two storey apartments

The applicant has submitted that the modifications are primarily the result of detailed construction-specific design changes to achieve compliance with the National Construction Code (NCC) and Building Code of Australia (BCA) resulting from design collaboration between the architect and specialist technical consultants relating to disability access, structural engineering, NCC and BCA compliance and fire safety and essential services.

The application describes the modifications in detail and provides specific justifications for the changes as follows:

Basement Level 2 – SSL 52,600

- Change to southern external wall for structural design improvements
- Alterations to the size and layout of residential storage
- Additional plant and service rooms in the south west corner



Figures 1 & 2 – Approved Basement Level 2 Plan, DA 2000 Rev C (left) and Proposed Basement Level 2 Plan, DA 2000 Rev F (right)

Basement Level 1 – SSL 55,800

- Change parking layout, plant and services rooms and bin storage
- Floor level raised 100mm and southern wall alignment changed subject to structural engineering requirements
- Fire egress stairs combined to a single exit point at southern boundary (resulting from BCA and Engineering requirements)
- Increased basement footprint equivalent to 3.7% of the site area



Figures 3 & 4 – Approved Basement Level 1 Plan, DA 2001 Rev C (left) and Proposed Basement 1 Level 2 Plan, DA 2001 Rev F (right)

Ground floor – RL 59,000 – RL 59,900

- Ground floor car parking floor level reduced by 900mm (RL 59,900 to 59,000)
- The communal interior space reduced to accommodate altered/increased stairs
- Alterations to the parking layout, plant and services rooms
- Redesign street entry, stairs and platform lift and associated entry pathway to the residential flat building
- Two storey apartments (ground level and level 1) converted to single storey apartments with private terrace at ground level for Unit 001 and 002 located on the ground level
- Change internal apartment layout and provision of 2 x 3 bedroom apartments for the ground level
- Relocate car park exhaust shaft from Ben Boyd Road street frontage to be within the building core to reduce visual impacts
- Gas meter relocated adjacent to street entry
- Provision of 2 x air conditioner units on ground level landscaped setbacks adjacent to ground level apartments



Figures 5 & 6 – Approved Ground Floor Plan, DA 2002 Rev C (left) and Proposed Ground Floor Plan, DA 2002 Rev F (right)

Level 1:

- Alterations to the number and design of apartment layouts
- Alterations to the size of the southern balconies and northern patios
- Reduced dimension of common circulation space
- Reconfigure landscaped gardens to provide rear landscaped private open space for the four Level 1 apartments
- Access ladder added to south of garbage collection area on Ben Boyd Road for maintenance purposes
- 4 x air conditioner units are provided within the rear private open space of Level 1 apartments.



Figures 7 & 8 – Approved Level 1 Floor Plan, DA 2003 Rev C (left) and Proposed Level 1 Floor Plan, DA 2003 Rev F (right)

Levels 2 and 3:

- Modification of internal apartment layouts
- Amendments to the design and size of the southern balconies



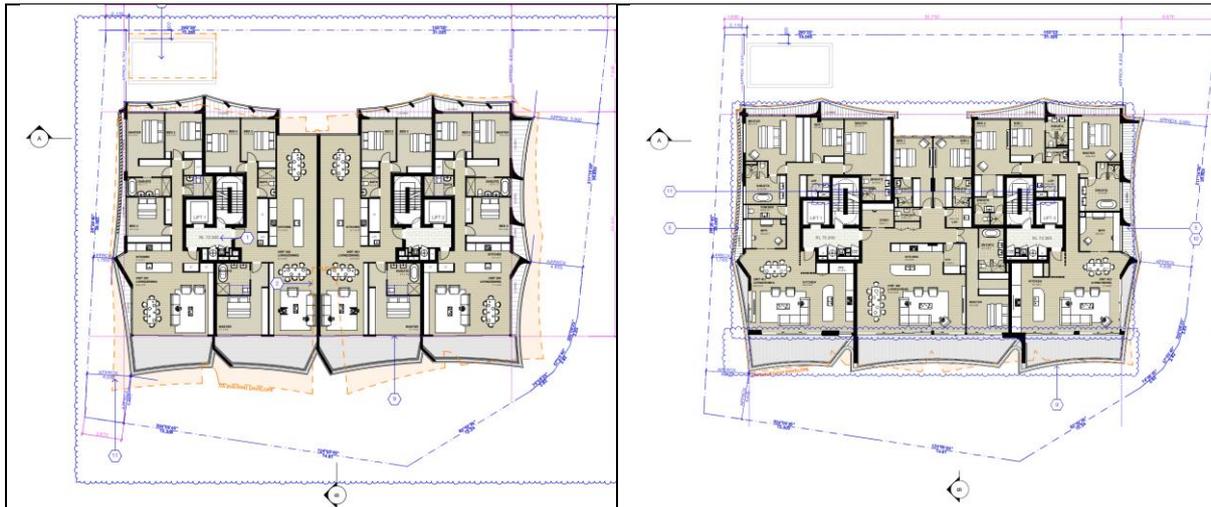
Figures 9 & 10 – Approved Level 2 Floor Plan, DA 2004 Rev C (left) and Proposed Level 2 Floor Plan, DA 2004 Rev F (right)



Figures 11 & 12 – Approved Level 3 Floor Plan, DA 2005 Rev C (left) and Proposed Level 2 Floor Plan, DA 2005 Rev F (right)

Level 4:

- Change internal apartment layouts
- Amendments to the design and size of the southern balconies
- 4 x 3-bedroom apartments converted to 3 x 3-bedroom apartments



Figures 13 & 14 – Approved Level 4 Floor Plan, DA 2006 Rev C (left) and Proposed Level 2 Floor Plan, DA 2006 Rev F (right)

Level 5:

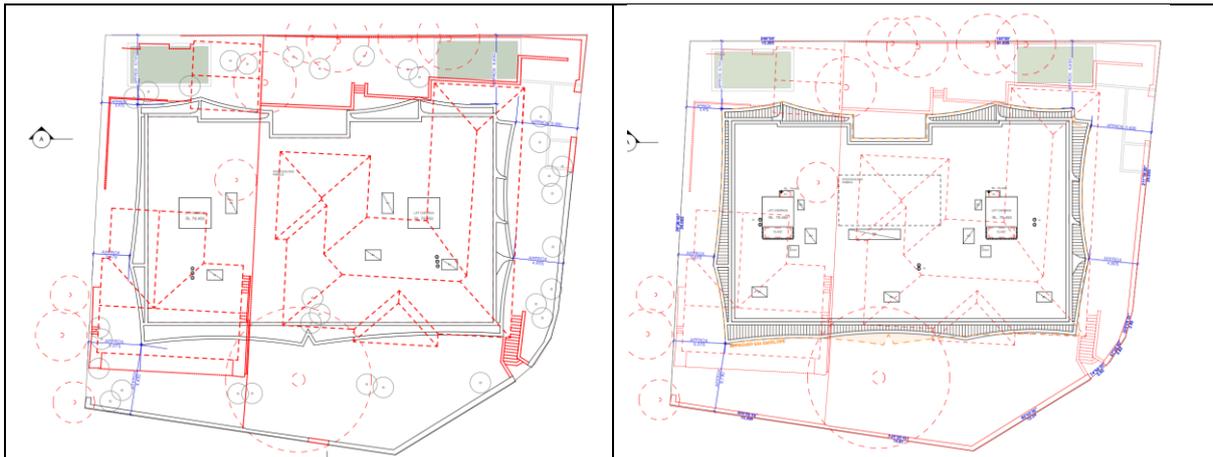
- Change internal apartment layouts (3 x 3-bedroom apartments to remain)
- Amendments to the design and size of the southern balconies
- Operate louvred screen added to Unit 501 western elevation



Figures 15 & 16 – Approved Level 5 Floor Plan, DA 2007 Rev C (left) and Proposed Level 2 Floor Plan, DA 2007 Rev F (right)

Roof:

- Additional services plant including air conditioning condensers on southern side of lift overrun
- 3 x additional roof skylights added (total 6 skylights)
- Car park exhaust shaft located adjacent to northern side of lift overrun



Figures 17 & 18 – Approved Roof Plan, DA 2008 Rev C (left) and Proposed Roof Plan, DA 2008 Rev F (right)

Elevations:

- Additional privacy screens to western façade including Level 2 and operate louvre screen added to western elevation of Level 5
- Alterations to glazing due to amendments to internal layouts of apartments



Figure 19 - Approved Southern Elevation, DA 3001 Rev C

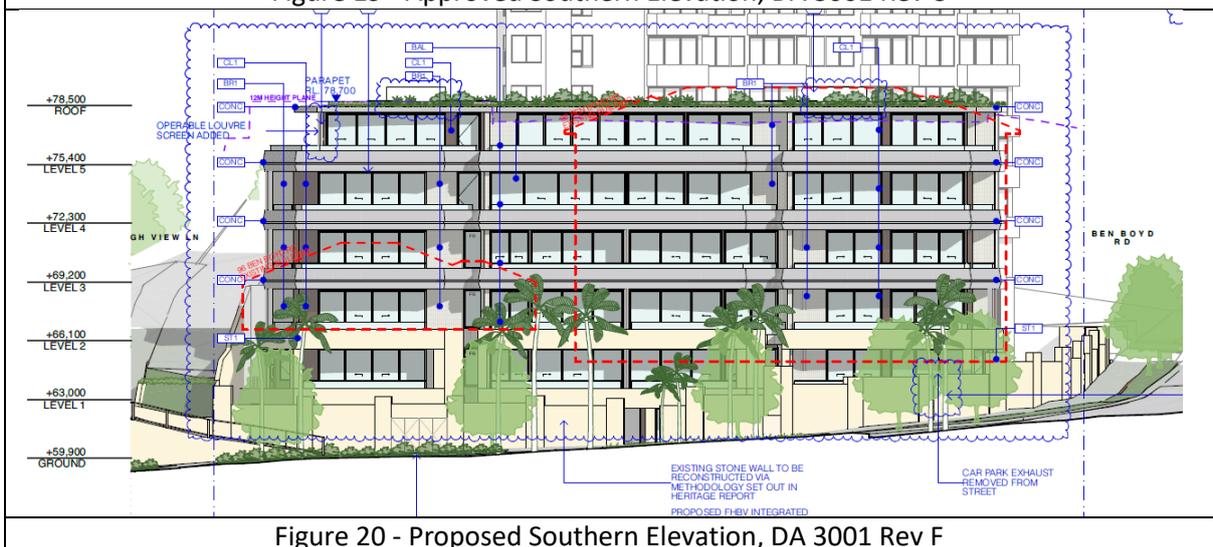


Figure 20 - Proposed Southern Elevation, DA 3001 Rev F

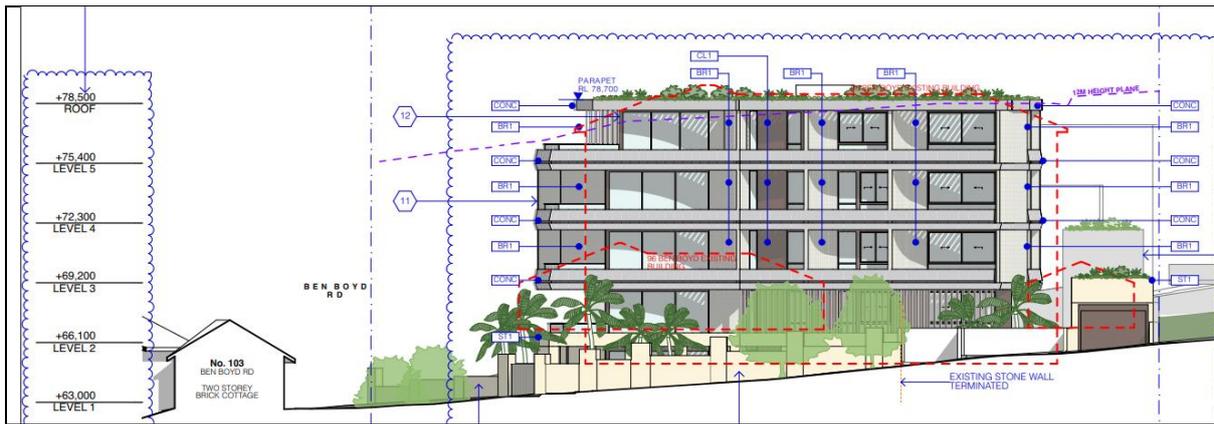


Figure 21 - Approved Eastern Elevation, DA 3002 Rev C

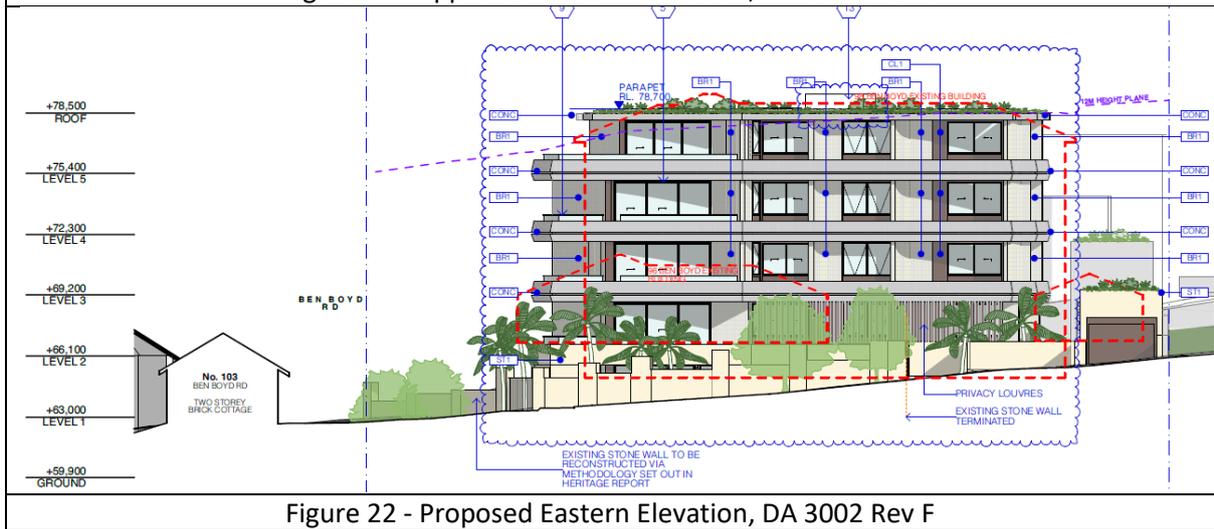


Figure 22 - Proposed Eastern Elevation, DA 3002 Rev F

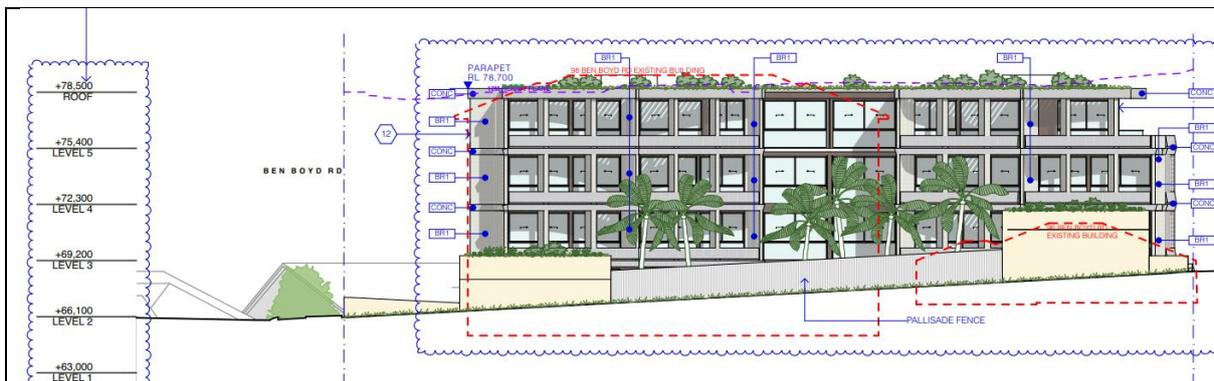


Figure 23 - Approved Northern Elevation, DA 3000 Rev C

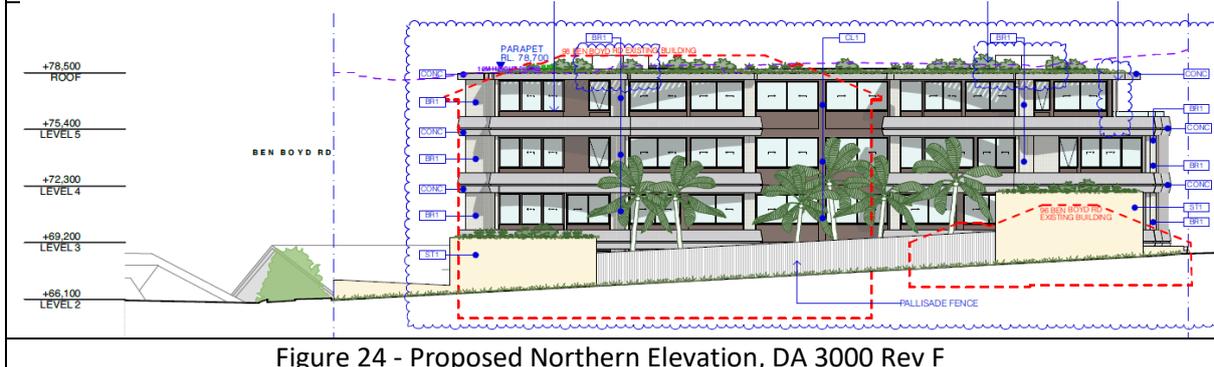


Figure 24 - Proposed Northern Elevation, DA 3000 Rev F

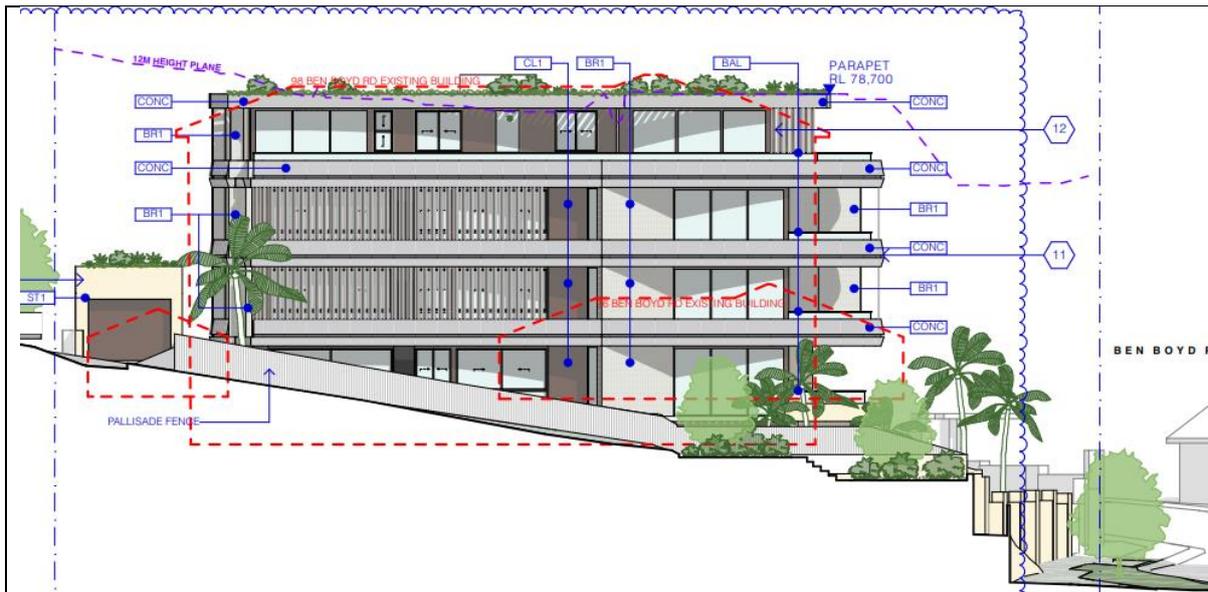


Figure 25 - Approved Western Elevation, DA 3003 Rev C

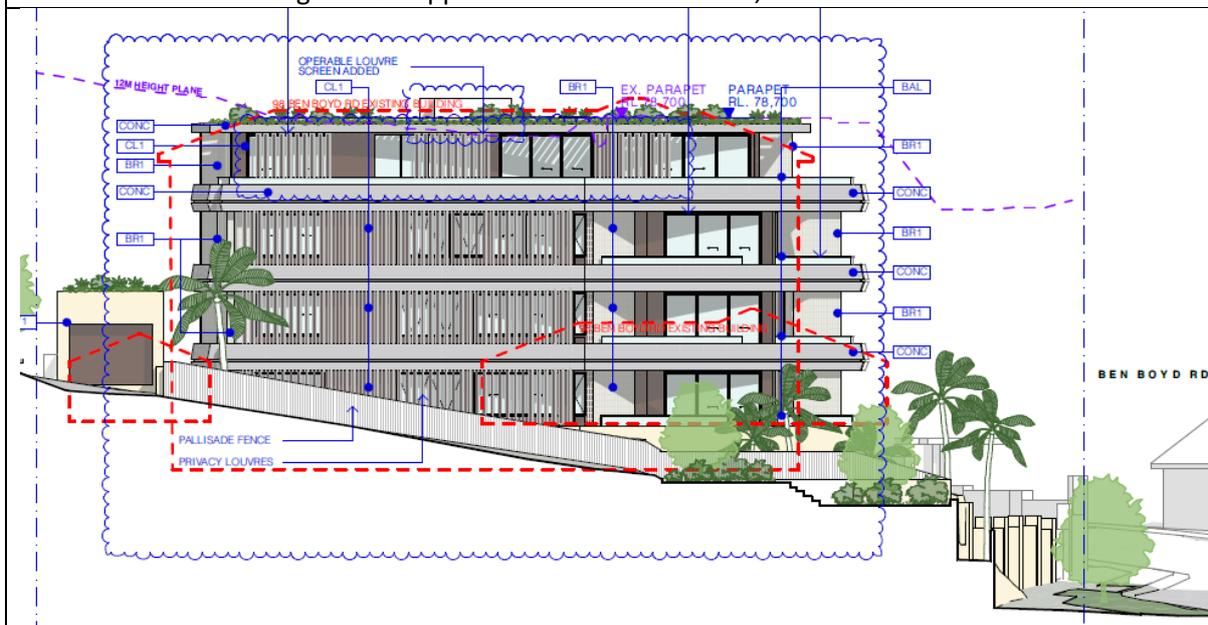


Figure 26 - Proposed Western Elevation, DA 3003 Rev F

Proposed Modifications to the Development Data

The following table summarises the proposed changes to the development data.

Development Data Criteria	Approved Development (DA 86/2022 & LEC 2022/165233)	Proposed Modified Development
Number of apartments	21 apartments in total	20 apartments in total
Apartment mix	4 x 2-bedroom 17 x 3-bedroom	6 x 2-bedroom 14 x 3-bedroom
Maximum building height (Clause 4.3 requires a maximum height of 12m)	13.65m to highest point of the parapet on the southern edge of the roof Exceeded the height control by 1.65m equivalent to a variation of 13.75%	13.65m to the highest point of the parapet on the southern edge of the roof Exceeds the height control by 1.65m equivalent to a variation of 13.75%
ADG Objective 3D Communal Open Space	169m ² (9.9% of site area)	171m ² (10.1% of site area)

Minimum Required 25% of site area (1,699.35 x 0.25 = 424.8m ²)		
ADG Objective 3E Deep Soil Zone Minimum required 7% of site area (1,699.35 x 0.07 = 119m ²)	369m ² (21.7% of site area)	361m ² (21.2% of site area)
ADG Objective 4A Solar Access Minimum 70% of apartments receive minimum 2 hours solar access to living room windows and private open space midwinter Maximum 15% of apartments receive no direct sunlight midwinter	15 of 21 apartments compliant (71%) 3 of 21 apartments (14%)	16 of 20 apartments compliant (80%) 3 of 20 apartments (15%)
ADG Objective 4B Natural cross ventilation Minimum 60% of apartments	19 of 21 apartments (90%)	20 of 20 apartments (100%)
ADG Objective 2F Building Separation ADG Objective Visual Privacy ADG Objective 4H Acoustic Privacy Minimum separation distances	Northern = 6.65m - 6.745m minimum Eastern = 4.8m minimum (2.1m south east corner to street frontage) Southern = 4.405m minimum Western = 1.765m minimum	No change to approved setbacks with the exception that the south east corner setback is increased to 2.7m
DCP Maximum Site coverage 45% of site area (1,699.35 x 0.45 = 751.2m ²)	825m ² (48.55%)	843m ² (49.61%)
DCP Minimum Landscaped Area 40% of site area (1,699.35 x 0.4 = 667.74m ²)	41.4% (704m ²) including engineered deep soil zone adjacent to northern external wall of basement 24.4% additional rooftop landscaping	No change - 41.4% (704m ²). 24.4% additional rooftop landscaping
DCP Minimum Unbuilt Upon Area 15% of site area (1,699.35 x 0.15 = 254.9m ²)	462m ² (27.54% of site area)	440m ² (26.72% of site area)
On-site Parking Provision 1 space per 1 and 2 bedroom apartment 1.5 spaces per 3+ bedroom apartment 0.25 visitor spaces per dwelling	Required (maximum): Resident spaces required: (1 x 4 = 4 spaces) + (1.5 x 17 = 25.5 spaces) Total 30 spaces Visitor spaces required = (0.25 x 21 = 5.25 spaces) Total 6 spaces	Required (maximum): Resident spaces required: (1 x 6 = 6 spaces) + (1.5 x 14 = 21 space) Total 27 spaces Visitor spaces required = (0.25 x 20 = 5 spaces) Total 5 spaces

	Approved 33 car parking spaces (including 4 accessible) 4 motorcycle parking spaces 24 bicycle spaces (3 x visitor bicycle spaces)	Proposed: 30 car parking spaces (including 7 accessible) 4 motorcycle spaces 22 bicycle spaces (2 x visitor car spaces)
DCP Solar Access Minimum 3 hours direct solar access between 9am and 3pm for living areas and private open space of neighbouring properties in midwinter	Compliant	No change to approved shadows cast.

Proposed modifications to the Notice of Determination

The application proposes the conditions for Notice of Determination DA 86/22 to be modified as follows:

(i) Modify Condition A1 to replace the list of approved plans and supporting technical documents with those plans and documents submitted with the modification application which are:

- Architectural Plans prepared by MHN Union Architects Project No. 21-095 Issue F dated 12 September 2023
- Design Verification Statement by MHN Union Architects Principal Brian Meyerson Registration No.4907 dated 3 April 2023
- Landscape Plan prepared by Arcadia dated April 2023
- BASIX Compliance Report by E-Lab Consulting Project Ref. P00144 Rev 4 dated 4 April 2023 and BASIX Certificate No.1273153M_04
- BCA Assessment Report by Steve Watson and Partners No.2022/2860R.1.2 dated 4 April 2023

(ii) Modify Condition C13 as follows (strikethrough text to be deleted and bold text to be inserted):

*C13. The bicycle storage area must accommodate a minimum of ~~21~~ **20** bicycles, and a visitor bicycle rail shall be provided for ~~3~~ **2** visitor bicycles.*

(iii) Modify Condition C14 as follows (strikethrough text to be deleted and bold text to be inserted):

*C14. A total of **no less than four (4)** accessible parking spaces shall be provided as part of the total car-parking requirements.*

(iv) Modify condition C31 as follows (strikethrough text to be deleted and bold text to be inserted):

C31. **Except where shown on the approved plans identified in Condition A1, all plant and equipment (including but not limited to air conditioning equipment) is to be located within the basement of the building or adjoining the car park lift shaft and is not to be located on balconies or the roof. Fireplace flues to roof areas are permitted (in accordance with **Condition C10**). Plans and specifications complying with this condition must be submitted to the Certifying Authority for Approval prior to the issue of the relevant Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.**

(Reason: *Minimise impact on surrounding properties, improved visual appearance and amenity for locality*)

(v) Modify condition C44 as follows (strikethrough text to be deleted and bold text to be inserted):

C44. **Under clause 75 of the Environmental Planning and Assessment Regulation 2021, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. 1273153M_04 dated 4 April 2023, for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.**

(Reason: *To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements*)"

(vi) Modify condition G21 as follows (strikethrough text to be deleted and bold text to be inserted):

G21. **Car parking spaces must be provided and maintained at all times on the subject site. The spaces shall be allocated to uses within the building in accordance the following table:**

Residential	Parking Spaces
<i>Residential (including 7 accessible spaces)</i>	27
<i>Visitor (excluding carwash bay)</i>	4 3
Total	33 30 spaces

In addition to the modifications requested in the applicant, the description of the development must also be modified from:

"Demolition of existing structures and construction of a residential flat building containing 21 apartments including basement parking and associated landscaping and civil works"

To:

“Consolidation of 2 lots, demolition of existing structures, excavation and construction of a six-storey residential flat building containing 20 apartments over two levels of basement parking and parking at grade, landscaping and associated works”

Review of Determined Plans

The proposed modification plans have been assessed against the stamped approved plans confirming that no further changes have been made outside of the scope of the proposed modifications sought under this application and as described above.

Consent Authority

The Minister’s Local Planning Panel Direction dated 30 June 2020 states that councils should make arrangements for the determination of modification applications made under Section 4.56 of the Act by the local planning panel or council staff.

The Minister’s Directions also outlines the types of developments that are to be determined by the Local Planning Panel which includes Section 4.55(2) applications for modifications to consents approved by the Panel if:

- The application seeks to modify a condition imposed or modified by the Panel.
- The application meets the criteria for development application set out in the Schedules to the direction relating to conflict of interest, contentious development or departure from development standards.

The original application would have been referred to the North Sydney Local Planning Panel for determination because the development involved SEPP 65 development, a variation to a development standard by greater than 10%, and was contentious development because more than 10 objections were received.

However, the applicant appealed the deemed refusal of the application and therefore the Land and Environment Court was the consent authority. Should the application not have been appealed, the subject modification application would ordinarily have been lodged under Section 4.55(2) of the Act as opposed to Section 4.56 of the Act. In which case, the proposed modifications maintain and alter respective roof elements that have a variation to the height of buildings development standard greater than 10% and relates to a SEPP 65 development.

Consistent with the requirements for Section 4.55(2) modifications, it is recommended that the subject modification application made under Section 4.56 of the Act be referred to the North Sydney Local Planning Panel for determination consistent with the discretion afforded to councils to do so.

STATUTORY CONTROLS

North Sydney Local Environmental Plan 2013

- Zoning – R4 High Density Residential
- Item of Heritage – No
- In Vicinity of Item of Heritage – Yes. Local Heritage Item located at 107 Ben Boyd Road directly east of the site
- Conservation Area - No

Environmental Planning and Assessment Act 1979

SEPP (Biodiversity and Conservation) 2021

- Chapter 2 Vegetation in non-rural areas
- Chapter 6 Water Catchments

SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Resilience and Hazards) 2021

- Chapter 4 Remediation of Land

SEPP (Transport & Infrastructure) 2021

SEPP No 65 – Design Quality of Residential Apartment Development

POLICY CONTROLS

North Sydney Development Control Plan 2013

Apartment Design Guide

North Sydney Local Infrastructure Contributions Plan 2020

DESCRIPTION OF LOCALITY

The subject site is located at No. 96-98 Ben Boyd Road, Neutral Bay and comprises two (2) lots, being Lot A DP 348364 and SP 61709. The site is located on the northern side of Ben Boyd Road between the intersections with Premier Street and Highview Lane/Ben Boyd Road.

The site is an irregular shape and has its southern and eastern boundaries adjoining the road reserve of Ben Boyd Road and the western boundary adjoining Highview Lane. The total site area is 1,699.3m² as stipulated in the Survey Plan prepared by LTS Lockley dated 03 November 2021.

The site has a moderate and consistent slope down from the northern boundary towards the south which affords views and outlooks towards Neutral Bay and beyond to Sydney Harbour and the CBD.

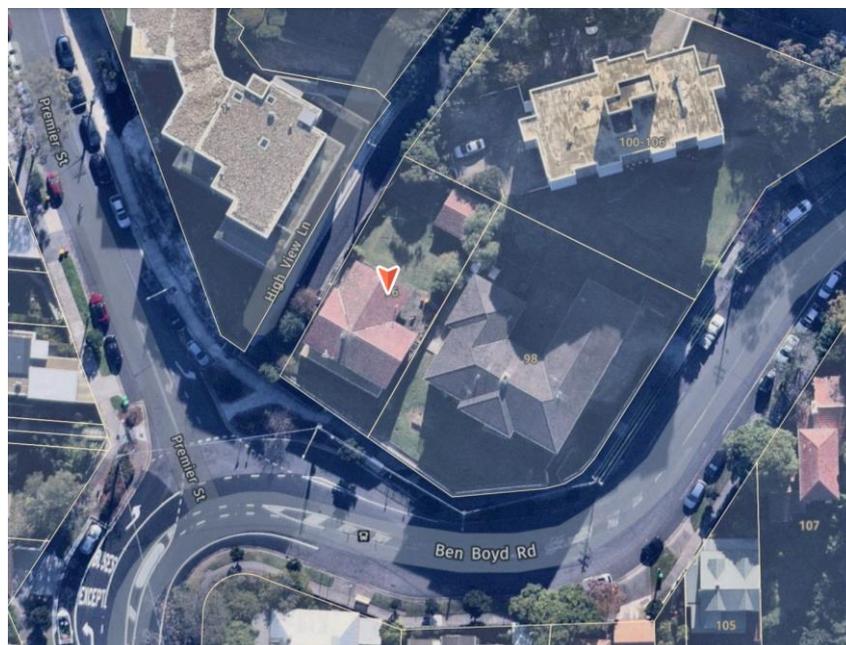


Figure 27 – Aerial photo of the site and surrounds. Source: Nearmap dated 20 June 2023

The site is zoned R4 High Density Residential, subject to a maximum height control of 12m, not within a conservation area but in the vicinity of a local heritage item (I0574 – 107 Ben Boyd Road).



Figures 28, 29 & 30 – Land Zoning Map (left), Height of Building Map (middle) and Heritage Map (right) with subject site hatched in red

The existing site comprises of a two storey dwelling (No.96) and a four storey residential flat building (No.98). Adjoining the site to the west is Highview Lane and to the west of the lane is a five-storey residential flat building. Adjoining the site to the north is a nine-storey residential flat building with at-grade parking beneath the building. Properties to the western side of Premier Street are in Zone R2 Low Density Residential. Land to the southern side of Ben Boyd Road is in Zone R3 Medium Density Residential. Land to the north is within Zone R4 High Density Residential.



Figures 31, 32 & 33 – Photo of the site from the southern side of Ben Boyd Road (left), photo of site from Highview Lane (middle) and photo of the site from eastern side of Ben Boyd Road (right)

RELEVANT DEVELOPMENT HISTORY

Development Application **DA86/2022** for demolition of existing structures and construction of a residential flat building containing 21 apartments including basement parking and associated landscaping and civil works was approved by the Land and Environment Court on 30 November 2022.

CURRENT APPLICATION HISTORY

Date	Action
28 April 2023	Development Application No. 86/22/2 proposing modifications to a six storey residential flat building were lodged on 28 April 2023.
04 May 2023	Following an initial review of the modification application an amended notification plan was requested in an A4 format which includes a list of all amendments to the approved development shown in plan and elevation. All changes are to be shown coloured and clouded with notations included. An amended notification was subsequently submitted by the applicant on 08 May 2023.

26 May 2023	Modification Application No. 86/22/2 was notified to adjoining properties and the Neutral Precinct between 12 May – 26 May 2023.
14 & 16 June 2023	A planning consultant was engaged to prepare an assessment report for the modification application on 14 June and relevant documents and plans were issued to the planning consultant for review on 16 June 2023.
15 June 2023	A site visit was completed by the Council assessment officer.
04 September 2023	<p>Following a review of the consultant report and submitted plans as well as documentation issues and concerns were noted and a request for amendments to the plans (stipulated below) issued in writing to the applicant on 04 September 2023.</p> <ul style="list-style-type: none"> • The modification application seeks an additional 18m² increasing the site coverage to 49.61% which is 4.61% greater than the minimum 45% stipulated in Table B-1.6, s1.5.5 of NSDCP 2013 and 1.06% greater than that agreed to during the s34AA conciliation conference. Amendments were required so as to not result in additional exceedance in site coverage. • The modification application seeks additional excavation to remove a rectangular deep soil area within basement level 2 and add approximately 53m² of basement adjacent to the northern boundary with a setback of 800mm. The assessment confirmed there is substantial storage proposed within the basement and car parking areas as well as an exceedance in car parking necessitating additional excavation which should be minimised in order to satisfy the matters for consideration in Cl. 6.10 ‘Earthworks’ of the NSLEP 2013 and objectives and provisions in s1.3.1 of the NSDCP 2013. • The modification application was referred to Council’s Landscape Development Officer who was not supportive of the amended Landscape Plan. The amended Landscape Plan (SK1, Issue G), whilst retaining the approved trees & ferns, proposes the removal of virtually all the underplanting as approved (SK1, Issue D). The proposal and Landscape Plan must be amended to retain the landscaping treatments as approved by the LEC. • Common open space and communal room – clarity was sought to the location of the modified common open space and the reduced size of the communal room is not supported and it was requested the communal room be retained as previously approved.
12 September 2023	<p>The applicant submitted amended plans including additional documentation with the following amendments to address Council’s issues/concerns.</p> <ul style="list-style-type: none"> • Basement 2 was amended to maintain the previously approved basement footprint not proposing additional excavation adjacent to the northern boundary. • No amendments are sought to the proposed site coverage (843m² or 49.61%) and supporting reasoning is provided within the planning consultant supporting letter for the additional site coverage. • No amendments are sought to the landscaping, however a written response was provided by the Landscape Architect in support of the amended landscape plan stating the revised landscaping promotes solar access to ground level apartments with taller understorey species to the boundary of the site. The Landscape Architect contends that overall soft landscaping remains unchanged, the overall planting species mix remains unchanged and the proposed layering of planting has been introduced to improve the amenity of open spaces. • The COS was confirmed to be in the southern setback of the site and considered by the applicant’s planner in their response as generally in accordance with the previously approved layout.

REFERRALS

Engineering

Council's Senior Development Engineer has advised the modifications can be supported and no further conditions of consent are required subject to those originally recommended and detailed in the conditions of consent for DA 86/22.

Traffic

The modification application was referred to Council's Traffic Engineer who has advised the application may be supported subject to the following recommended conditions in italics:

1. *That a Construction Management Plan be prepared and submitted to Council for approval by the North Sydney Traffic Committee prior to the issue of the Construction Certificate. Any use of Council property shall require appropriate separate permits/ approvals issued by North Sydney Council.*
This is already addressed in Condition B1.
2. *That all aspects of car park comply with the Australian Standard AS2890.1 Off-Street Parking.*
This is already addressed in Condition C15.
3. *That, all aspects of the bicycle parking facilities comply with the Australian Standard AS2890.3.*
This is already addressed in Condition C48
4. *That a condition be imposed on the determination stating that Council will not consider any future requests for provision of Loading Zones benefitting this development.*
This will be added to Condition C16.
5. *That a condition be imposed on the determination stating that Council will not consider any future requests to remove on-street parking to gain access to off-street parking.*
This will be added to Condition C15.
6. *The driveway to the site must be designed such that there are minimum sight lines for pedestrian safety as per Figure 3.2 of AS 2890.1.*
This is already addressed in Condition C49.
7. *Installation of a convex mirror on the power pole opposite the car life on High View Lane is not supported.*
This will be added to Condition C16.

Planning Comment (Council): The Traffic & Transport Engineer requirements restricting any future request for loading zones is not supported because any loading zones connected to construction of the RFB are addressed in Condition B1 'Construction Management Program – Local Traffic Committee Approval' and Condition C11 'Work Zone'. Furthermore, any further loss in on street parking or additional access affecting on street parking would be subject to either a modification or new development application and considered on merit subject to controls and referral to Council's Traffic & Transport Engineer.

It is noted in the Council Traffic & Transport Engineer referral the installation of a convex mirror can be installed within the property (96-98 Ben Boyd Road) only therefore the applicant's engineer (JMT Consulting) recommends the following measures to safe egress from the car lift to High View Lane.

- Edge of lift structure set back 1300mm from the property boundary to achieve sight lines and swept paths out to High View Lane
- Replacement of the existing timber fence on property boundary with either a low height wall or palisade fence to allow drivers to see through the fence
- No structures / obstructions within the driver sight triangles

Condition C49 'Pedestrian Sight Distance at Vehicular Exit Driveway' is sufficient in ensuring safety of exit to High View Lane and it is noted the condition provides opportunity for use of convex mirrors at the egress to assist with sight lines. It is recommended the condition (below) is amended as per Council's Traffic and Transport Engineer requirements not permitting the installation of a convex mirror opposite the car lift on High View Lane but limited to within the property to improve site lines.

Pedestrian Sight Distance at Vehicular Exit Driveway

C49. A pedestrian sight triangle of 2.0 metres by 2.5 metres is to be provided on both sides of the vehicular egress driveway in accordance with AS2890.1:2004. Any variation to this sight distance requirement would need to be assessed by an appropriately qualified traffic engineer and supplemented with additional traffic control devices such as convex mirrors at the egress (**within the site**) to assist with sight lines, with the variation to not result in any detrimental impact in terms of pedestrian safety. Details demonstrating compliance with the requirements of this condition are to be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

(Reason: To ensure pedestrian safety at the site exit driveway)

Building

A condition of consent has been applied and is to remain requiring the proposed development to be in accordance with the National Construction Code of Australia (F1 National Construction Code). This would need to be undertaken prior to the issue of a Construction Certificate. Should significant changes be required to achieve compliance with NCC standards, a Section 4.56 application would be necessary.

Landscape

The modification application was referred to Council's Landscape Development Officer who advised as follows (*in italics*):

"The amended Landscape Plan cannot be supported. While the proposed amended construction works are quite minor, and have very little impact on approved landscaping, the amended Landscape Plan (SK1, Issue G), whilst retaining the approved trees & ferns, proposes the removal of virtually all the underplanting as approved (SK1, Issue D). There is no apparent reason for this change, which will result in a much barer, less lush and vegetated landscape softening the building surrounds. A revised Landscape Plan, accurately reflecting that already approved shall be required. Should a suitably amended proposal be lodged, all existing tree protection conditions shall be applied."

Conditions referring to the originally approved Landscape Plan will be retained and the originally approved landscape scheme can be implemented.

Council Planning Comment: the original approved Landscape Plan cannot be retained and implemented due to the proposed changes within the setbacks of the site such as the provision of two paved terraces within the southern setback of the site serving the ground level units and a more formalised setting within the northern rear of the site providing private open space to Level 1 units.

It is noted that the amended Landscape Plan prepared by Arcadia Plan is more conceptual not detailing every plant species within the site but referring to large parts of the site as either Mix 1 (Low Planting) or Mix 2 (Tall Planting). Mix 1 zone details the number of groundcovers to be planted and Mix 2 stipulated the type of plant species and number to be planted.

Council's assessment officer also did a review of the approved landscape plans and proposed landscape plans noting the planting especially for larger plant species such as trees and ferns are similar to that approved.

Due to the similarity in tree planting and fern planting irrespective of the alterations to provision of grasses/groundcovers and shrubs the landscaping will retain a similar outcome to that originally approved by the LEC.

Following receipt of the additional correspondence by the Landscape Architect, a detailed review by the assessment officer and Council's Landscape Development Officer raised no further comments with regards to modifications to landscaping within the site.

Heritage

The following comments were provided by Council's Heritage Officer:

"The subject property is a not a scheduled heritage item and is not located within a conservation area. It is however, located in the vicinity of the heritage listed dwelling located to the east at 107 Ben Boyd Road. The proposed changes to the development will have no additional impact to the heritage item and hence, clause 5.10 of NSLEP 2013 and Part B Section 13.4 of NSDCP 2013 are considered to be satisfied.

The sandstone wall that forms the southern and eastern boundaries is a historic wall dating from circa 1892. This sandstone wall is a significant streetscape element and is characteristic to many streets within the North Sydney LGA. The Court approval acknowledges the wall's contribution to the streetscape and includes a heritage conservation methodology to ensure that the sandstone wall is demolished carefully, salvaged and re-constructed to match the existing wall using the random coursed sandstone ashlar blocks and the tapered pillars.

The proposed amendment to the wall to allow for improved DDA access from the street to the building entrance will result in a wider opening to the street and as a consequence, more loss of sandstone. This will have a detracting impact upon the historic wall and it is therefore recommended that the approved access be retained, however, it is unclear whether it is possible to provide DDA access and without a wider opening to the street.

It is also recommended that the fire hydrant cabinet be painted a colour to blend with the colour of the sandstone wall to mitigate its visual impact. A condition such as this is suggested:

FBHV Cabinet The proposed new fire services cabinet is to be located within the sandstone wall and is to be painted in a visually submissive colour that is sympathetic to the sandstone wall. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To reduce the visual impact of the cabinet on the streetscape.)”

This condition will be included at the end of existing Condition A5 ‘Works to Stone Wall’.

SUBMISSIONS

The application has been notified in accordance with Council’s Community Consultation Plan with adjoining properties and the Neutral Bay Precinct notified between 12 May to 26 May 2023. In response to the notification Council received no submissions to the proposal.

CONSIDERATION

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 2013

Section 4.56 Modifications by consent authorities of consents granted by the Court

- (1) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if—*
 - (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

The proposed modified development is considered to be substantially the same development as the development for which consent was originally granted. The proposed modifications generally relate to adjustments to the approved development to resolve NCC and structural/services/construction design efficiencies and enhance the layout and amenity of apartments resulting from more detailed consideration of *Disability Discrimination Act, 1992* (DDA). The changes to apartment mix are minor and maintain or improve solar access and natural cross ventilation. There is no change to the approved building height and setbacks and separation distances. Additional screens have been included to address privacy. One less apartment in total corresponds to one less car parking space. The use as a residential flat building with basement parking is unchanged. There is no significant change to the approved built form.

Section 4.56 also requires the consent authority to notify the application as follows:

- (b) *it has notified the application in accordance with—*
 - (i) *the regulations, if the regulations so require, and*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

The modification application was notified in accordance with Council's Community Engagement Protocol from 12 May to 26 May 2023. No submissions were received.

Section 4.56 requires the consent authority to notify those who made previous submissions as follows:

- (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*

All previous submitters were notified in addition to those notified in accordance with Council's Community Engagement Protocol.

Section 4.56 requires the consent authority to consider submissions and states:

- (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.*

No submissions were received.

Section 4.56 also requires the consent authority to assess the application in accordance with Section 4.15(1) and states:

(1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

The proposed modifications have been assessed against the matters for consideration in Subsection 4.15(1) of the Act further in this report. With regard to the reasons for the granting of the original consent in accordance with Subsection 4.56(1A), the Court's judgment (**Attachment _3**) has been considered.

The judgment sets out the statutory considerations being jurisdictional requirements to the granting of consent. The proposed modifications apart from the additional site coverage exceedance do not give rise to any new, or would be inconsistent with any former, prerequisite to the granting of consent.

The judgment at paragraph 9 outlines the reasons that the written request made pursuant to Clause 4.6 in NSLEP 2013 adequately justified the variations to the height of buildings development standard, as reproduced below. The modification does not change the maximum building height or the circumstances for the justification of the height variation:

“9 (d) the Applicant’s written request to vary the HoB development standard pursuant to cl 4.6 of NSLEP, noted that compliance with the development standard was unreasonable or unnecessary given that the objectives of the standard are achieved notwithstanding the non-compliance, for reasons including:

- (i) the proposed variation is limited to part of the upper level, roof slab and lift overrun of the Proposed Development, with the majority of the building being located below the maximum building height;*
- (ii) the massing of the building has been arranged in direct response to the sloping topography, existing built form on site and surrounding character, such that the exceedance to the HoB development standard has been placed in locations to minimise potential adverse impacts on neighbouring properties;*
- (iii) the proposed built form has been designed to create an improved interface with the surrounding streets and neighbouring developments, considering the constraints that arise due to the Subject Site’s significant sloping topography;*
- (iv) the HoB non-compliances are located at the south-west corner of the proposed built form and do not cause view loss of scenic, highly valued items or icons from neighbouring properties and this was confirmed within a revised View Impact Assessment, accompanied by updated photomontages and 3D views, prepared by Virtual Ideas, and which concluded that the amended form of the Proposed Development provides for reasonable and acceptable view sharing outcomes;*
- (v) the portions of the Proposed Development that would contravene the HoB standard do not cause any unacceptable solar access or view impacts to adjoining dwellings, public reserves or streets;*
- (vi) the proposal facilitates the orderly and economic development of the Subject Site, and in particular the lot at 96 Ben Boyd Road, which is presently occupied by an isolated single dwelling house that is inconsistent with the objectives of the R4 Zone;*
- (vii) the redevelopment of the Subject Site will provide for the housing needs of the community within a high density residential environment in accordance with the objectives of the R4 zoning of the Subject Site;*
- (viii) the Proposed Development is compatible with the land uses in the locality.*

(e) the Applicant’s written request to vary the HoB development standard pursuant to cl 4.6 of NSLEP, also noted that approval of the Proposed Development is in the public interest because the Proposed Development is consistent with the objectives of the development standard and there are sufficient environmental planning grounds to justify contravening the development standard, noting:

- (i) the natural topography of the site is a steep slope, with a slope from north to south, which creates physical constraints on the form of the development proposed on Subject Site, and the Applicant’s proposed built form is responsive to these constraints;*
- (ii) the variation to the height does not result in any unreasonable impacts to residential amenity, solar access, views or privacy;*

The proposed modifications include additional plant and equipment within screened enclosures on the rooftop and south of the two lift overruns. The plant and equipment enclosures will exceed the maximum 12m height of buildings control by a maximum 0.94m and will be the same height as the lift overruns to which the enclosures will be attached. The plant enclosures are located on the southern side of the lift overruns and will not add to any obstruction of views from the upslope apartments. The additional plant enclosures will be screened by rooftop landscaping and are recessed from the edges of the building footprint such that they will not be visible from nearby and adjoining public places. A revised height diagram is included in Figure 34 and revised view impact diagrams are included in Figures 35 and 36.

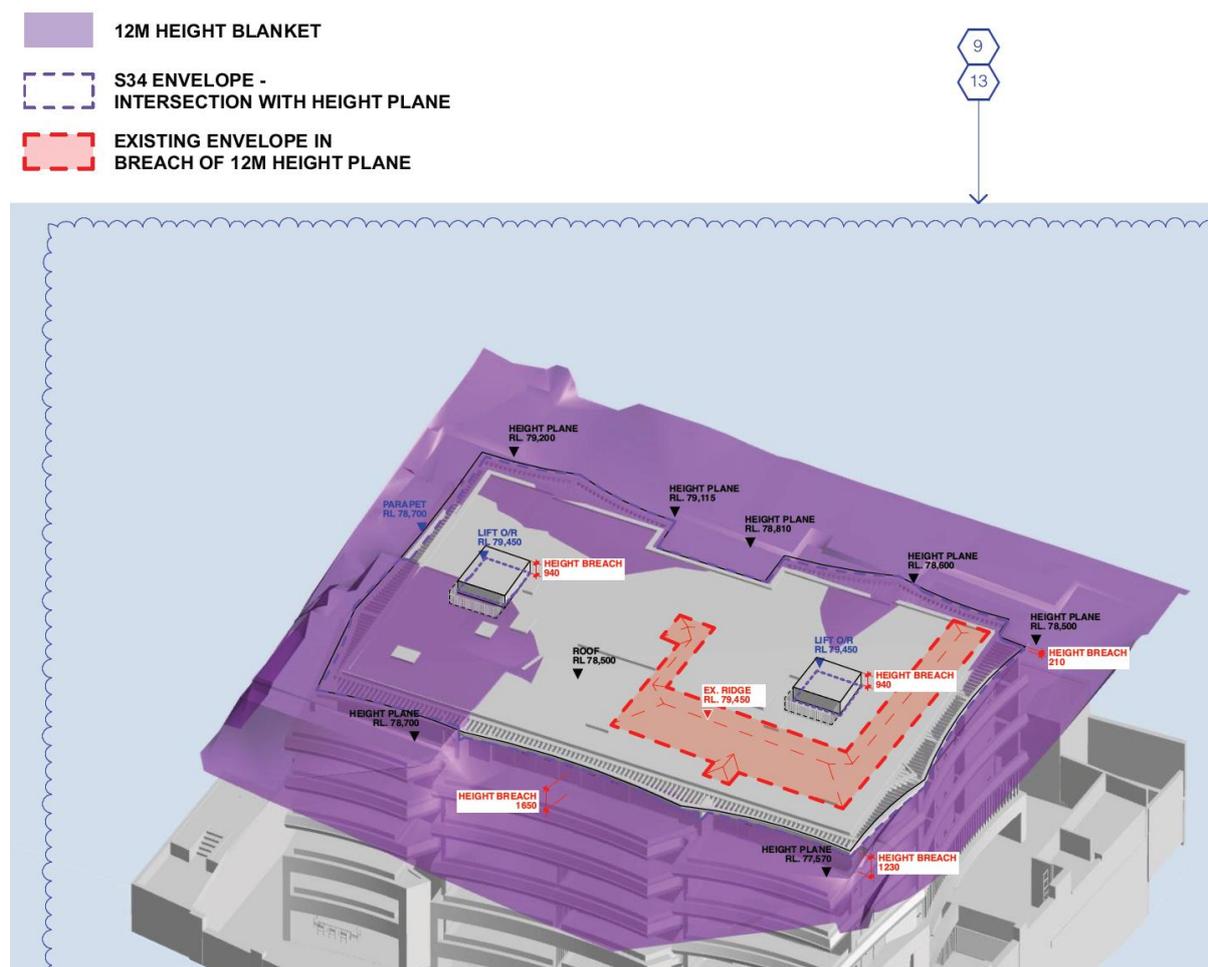


Figure 34 – Height Plane Diagram indicating additional screened rooftop plant (outlined dotted black), Dwg No. DA 9104 Rev F



Figure 35 – Revised view impact analysis diagram as viewed from Unit 12 No. 100 Ben Boyd Road. New plant enclosure coloured in red. Red dashed line is 12m height of building development standard line, Gyde Section 4.56 Planning Statement



Figure 36 – Revised view impact analysis diagram as viewed from Unit 25 No. 100 Ben Boyd Road. New plant enclosure behind lift overrun. Red dashed line is 12m height of building development standard line, Gyde Section 4.56 Planning Statement

The additional rooftop plant enclosure will not give rise to any associated material environmental impacts because the additional plant area does not compromise compliance with development controls and objectives and will not result in additional overshadowing impacts as shown in Figures 37, 38 and 39 depicting midwinter, worst-case scenario shadow changes.

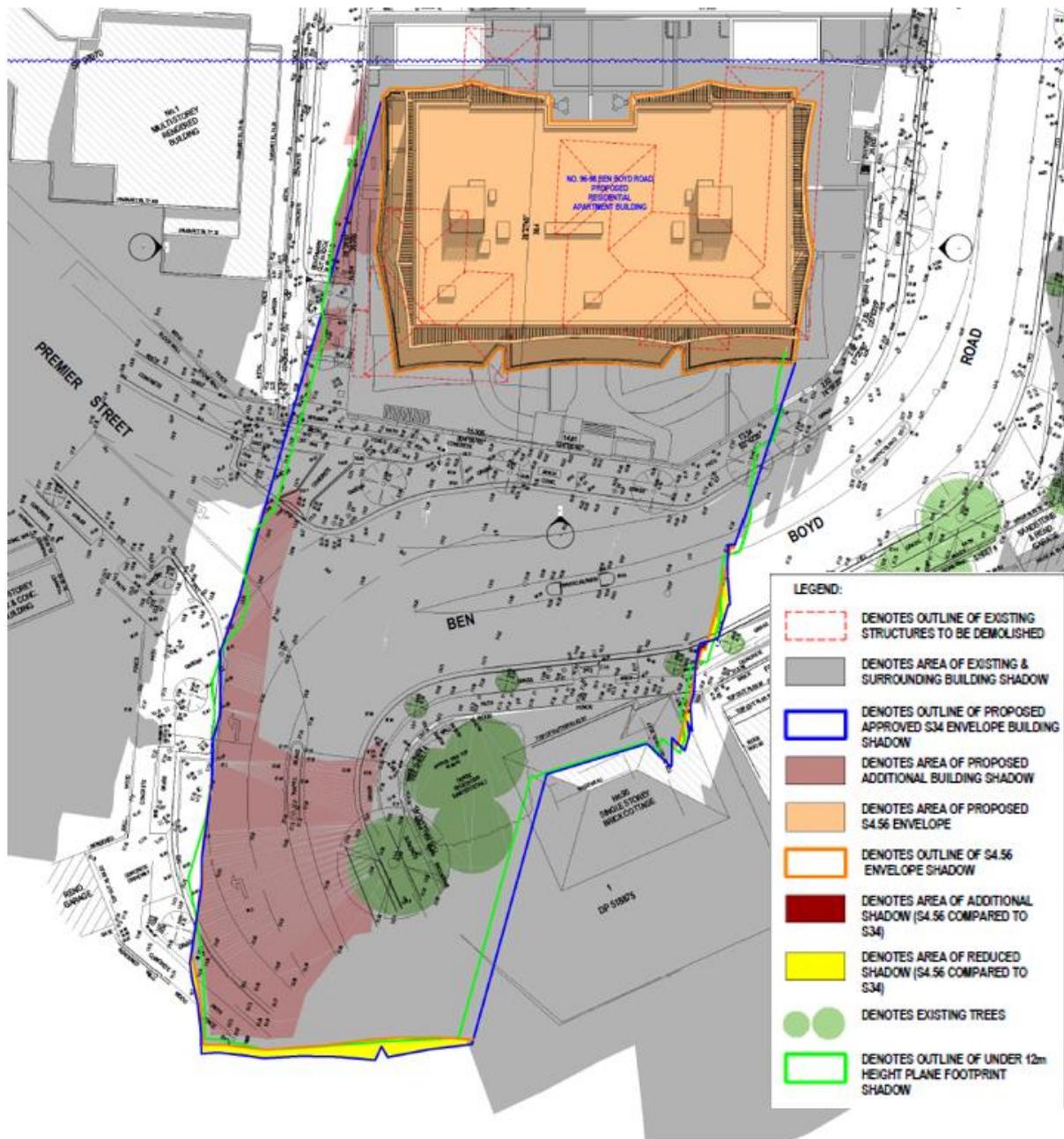


Figure 37 – Comparative shadow diagram midwinter 9am, Dwg No. DA 9210 Rev F

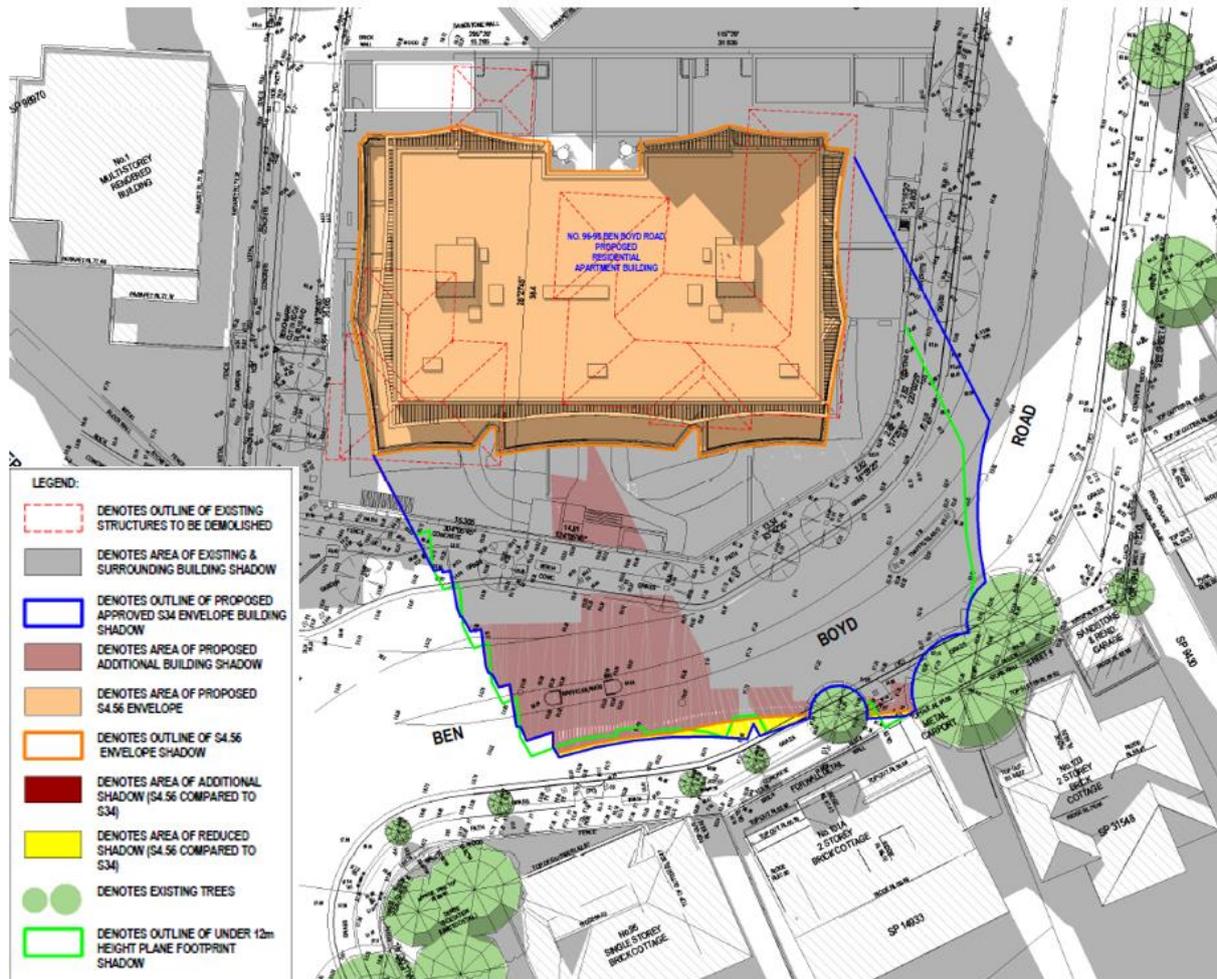


Figure 38 – Comparative shadow diagram midday in midwinter, Dwg No. DA 9213 Rev F

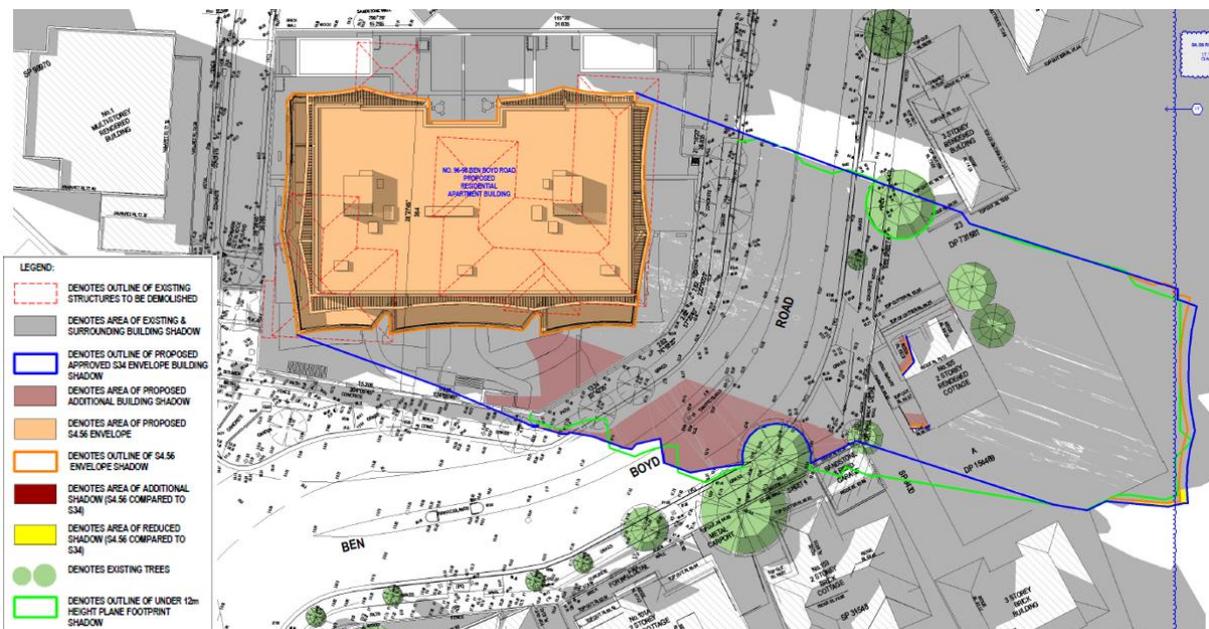


Figure 39 – Comparative shadow diagram at 3pm in midwinter, Dwg No. DA 9216 Rev F

Additional documentation in the form of a design verification statement prepared by Brian Meyerson Principal Reg. No.4907 of MHN Design Union dated 3 April 2023 has been provided to satisfy Section 102 of the *EP&A Regulations 2021*.

An amended BASIX Certificate to satisfy *SEPP (Building Sustainability Index: BASIX) 2004* being Certificate No.1273153M_04 dated 4 April 2023 has been provided.

Paragraph 9(g) of the Judgement mentions the existing stone wall at the frontage to Ben Boyd Road and the need for a construction methodology that protects and reconstructs part of the stone wall. The modifications will make further changes to the stone wall and its reconstruction. These modifications have been assessed by Council's Heritage Officer who has recommended additional conditions accordingly.

Paragraph 9(i) of the Judgement mentions the extent and methodology of excavation. Modifications include changes to the location of the southern and northern walls of the basement as a result of detailed engineering design. These changes have been assessed by Council's Engineer who has advised that existing conditions adequately address the design and construction of the basement walls as proposed.

Overall, the proposed modifications are considered to be consistent with the reasons for approval.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

- Chapter 2 Vegetation in Non-Rural Areas

Section 2.6 of the Policy specifies that a person must not clear declared vegetation in a non-rural area of the State without consent. The Policy confers the ability for a council to declare vegetation in a Development Control Plan where consent is required to remove or impact the vegetation. Section 16 of Part B in NSDCP 2013 specifies declared trees for the purpose of the Policy which includes primarily trees over 5m in height or crown width.

The original application involved the removal of several trees and potential impact to others to undertake the proposed excavation and construction works. The proposed development was considered to satisfy the provisions of the Policy in that consent was sought for the works and that the matters in Section 16 of Part B in NSDCP 2013 were satisfied. The proposed modifications do not seek to remove any additional trees or increase the potential impact to existing trees to be retained and therefore no further consideration is required regarding this Policy.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

- Chapter 6 Water Catchments

Having regard to Chapter 6 of the *SEPP (Biodiversity and Conservation) 2021* the proposed development is not considered to be detrimental to the Harbour and will not unduly impose upon the character of the foreshore given the site's inland location. The proposed development would not adversely affect the quantity or quality of water entering Sydney Harbour, being a regulated catchment for the purpose of Section 6.6 of the Policy. The application satisfies the requirements of the Policy.

State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development

In accordance with Section 102 of the *Environmental Planning and Assessment Regulations 2021*, the subject modification application made under section 4.56(1) of the Act is to be accompanied by a design verification statement. A design verification statement prepared by Brian Meyerson Principal Reg. No.4907 of MHN Design Union dated 3 April 2023 has been provided to satisfy Section 102 of the EP&A Regulations 2021. The statement demonstrates the modified development has satisfactorily addressed the Design Quality Principles in Schedule 1, the objectives in the ADG, and verified that the modifications do not diminish or detract from the design quality of the original development or compromise the design intent of the original development. An ADG Compliance table was submitted with the application and demonstrates that compliance is consistent with, or improved from, the original approval.

The proposed modifications are evaluated in accordance with the Design Quality Principles in Schedule 1 of the Policy.

Principle 1: Context and neighbourhood character

The proposed modifications are generally minor in nature and would not significantly alter the character of the approved development. The proposed modifications to the external privacy and solar shading devices responds to the site context having regard to the privacy at the interface with neighbouring apartments to the north and west.

Principle 2: Built form and scale

The proposed modifications generally retain the built form and scale of the approved development. There is no increase to the maximum building height. The additional rooftop plant is minor and has no significant impact to views and shadows as demonstrated above.

Principle 3: Density

The proposed modifications subject to Condition C51 Balconies would not alter the density of the approved development. The modifications result in one less apartment and no change to the building envelope.

Principle 4: Sustainability

The proposed modifications would not detract from the sustainability outcomes of the development. The minor modifications improve solar access and natural cross ventilation compliance with the ADG.

Principle 5: Landscape

The modifications proposed an alternative landscape plan which has been assessed by Councils Assessment and Landscape Development Officer who has determined that although the density of planting has varied the primary plants which will be visible from the street and contribute to softening the built form of the building will remain. The changes to the landscaping due to retention of trees and ferns ensures a compatibility with the original approved landscape plan.

Principle 6: Amenity

The proposed modifications would marginally increase the high level of residential amenity of the approved apartments by facilitating improvements to the internal layout and configuration of the apartments and refining the privacy and solar shading devices, solar access and natural cross ventilation.

Principle 7: Safety

The proposed modifications would not detract from the safety and security of the approved development.

Principle 8: Housing diversity and social interaction

The proposed modifications would not detract from the housing diversity or opportunities for social interaction within the approved development. There is a minor reduction in the size of the communal space between the lift lobbies at the ground floor level. However, the function of the space to provide informal and occasional resident interaction will not be compromised.

Principle 9: Aesthetics

The proposed modifications would not detract from the aesthetics of the approved development subject to the original Landscape Plan being implemented.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A revised BASIX Certificate has been submitted. Condition C44 is to be amended accordingly.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Ben Boyd Road is not identified in the Transport for NSW traffic volume maps as a freeway, a tollway, transitway or a road with an annual average daily traffic volume of more than 20,000 therefore Section 2.120 'Impact of road noise or vibration on non-road development' of the Policy does not apply.

The provisions of Division 17 of *State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP T&I)* concerning roads and traffic apply to the original and modified development. The Subject Site does not have a frontage to, nor is it located within proximity to, a classified road. The proposed modifications would not detract from the internal amenity of the apartments with respect to road noise and vibration given the relative minor nature of the modifications. A Transport Statement prepared by JMC Consulting dated 27 March 2023 was submitted with the modification application to cross reference the findings of the original approved Traffic and Parking Impact Report dated 28 October 2022 and verify that parking spaces, access aisles, swept paths, car lifts and accessible spaces, sight distances and car parking provisions are compliant with relevant standards, the provisions for motorcycles and bicycles is appropriate and the traffic generation is compatible with the capacity of the local road network.

North Sydney Local Environmental Plan 2013

Permissibility

The site is zoned R4 High Density Residential under the provisions of the North Sydney Local Environmental Plan 2013 (NSLEP 2013). Development for the purposes of a residential flat building is permissible with the consent of Council.

Objectives of the zone

The objectives of the R4 High Density Residential zone are stated below:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the development of sites for high density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To ensure that a reasonably high level of residential amenity is achieved and maintained.*

The proposed modifications would not detract from the attainment of the objectives of the zone.

Clause 4.3 - Height of buildings

The subject site has a maximum permitted building height of 12m pursuant to clause 4.3(2) in NSLEP 2013.

The approved development included a variation to the development standard with a maximum building height of 13.65m exceeding the height control by 1.65m which is equivalent to a variation of 13.75%.

The original application was supported by a written request to vary the development standard pursuant to Clause 4.6 in NSLEP 2013 which the Court found met the jurisdictional prerequisites to grant development consent.

Consistent with the findings by Justice Lloyd in *Gann & Anor v Sutherland Shire Council* [2008] NSWLEC 157, the modification of a development consent which results in a new or modified variation to a development standard, does not require a request for variation to the development standard to be made under Clause 4.6 of the Standard Instrument LEP. This is because the modification of a consent under S4.56, which is a stand-alone provision, is distinguished from the granting of development consent as outlined in Subsection 4.46(1C) and therefore Clause 4.6 is not enlivened for the proposed modifications.

The proposed modified development is considered substantially the same development and the proposed new or varied variations to the height of buildings development standard are therefore assessed in the context of the approved development, including the original written justification to vary the development standard, and the objectives of the development standard proposed to be varied.

It is noted that the proposed modification involves no change to the maximum height of the building and a minor increase in the components of the building above the height control (being the additional enclosed plant areas adjacent to the southern side of the lift overruns as shown in Figures 6, 7 and 8).

The proposal does not increase the GFA above the height control and does not increase the yield or density. The additional rooftop plant enclosures are the result of the finalisation of the detailed design of plant and equipment and services.

The objectives of the height of buildings development standard are addressed below.

Objective (1)(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,

The proposed modifications would not substantively alter the bulk and scale of the approved development and will not alter the appearance of the building within the broader context and setting.

Objective (1)(b) to promote the retention and, if appropriate, sharing of existing views,

Having regard to the assessment made under the original application which did not conclude any detrimental view impacts, the proposed modifications will not have additional impacts on views enjoyed from surrounding properties as demonstrated in Figures 7 and 8.

Objective (1)(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,

The proposed modifications are generally contained within the existing building envelope and do not contribute additional shadow as demonstrated in Figures 9, 10 and 11. The modification will not adversely impact any of the surrounding properties by way of additional shadow impacts.

Objective (1)(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,

The proposed modifications will not give rise to any potential additional privacy impacts and additional privacy screens are proposed in appropriate locations.

Objective (1)(e) to ensure compatibility between development, particularly at zone boundaries,

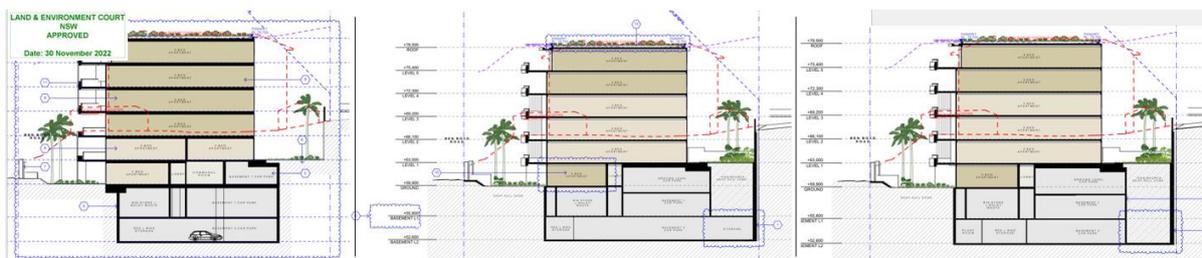
The proposed modifications would not substantively alter the bulk and massing of the development and will not change separation distances or the nature of the interface between the proposed new building and neighbouring buildings.

Objective (1)(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.

The proposed modifications would not substantively alter the scale or density of the development and the modified development remains consistent with the character of the area.

Clause 6.10 – Earthworks

This modification application seeks to retain the Basement 2 Level at RL 52,600 and the rectangular deep soil area at the northern boundary will remain as required by Council following a preliminary assessment of the modification application. The footprint of the basement will extend to the southern side to accommodate improved circulation, provision of plant rooms and services facilities. The extended basement to the south is acceptable not having a significant increase in excavation and the additional excavation is offset by the reduced excavation required due to amendments to the basement entry/exit to Ben Boyd Road.



Figures 40, 41 & 42 – Approved Section B, Rev C (left), proposed modification Section B, Rev D (middle) and amended modification Section B, Rev F (right)

No changes are proposed to the consent conditions requiring full dilapidation surveys on the structural condition of adjoining properties (C2 Dilapidation Report Private Property – Excavation), preparation of a Geotechnical Report (C4 Geotechnical Report) to ensure the structural integrity of the site and adjoining sites during excavation.

Clause 6.12 – Residential flat buildings

This clause was satisfied with respect to the original application. The proposed modifications do not give rise to any further consideration with respect to site isolation.

POLICY CONTROLS

Apartment Design Guide (ADG)

The proposed development has also been considered against the Apartment Design Guide and is generally compliant as detailed in the table below:

Amenity	Design Criteria	Comment	Compliance
2C – Building Height	<p><i>Consider the height of surrounding buildings that are unlikely to change (such as contributory and heritage items)</i></p> <p><i>Development should respond to desired future scale and character.</i></p>	<p>The proposed modifications do not change the maximum building height and introduces minor plant and equipment enclosures above the height control adjacent to the lift overruns. These minor additional features do not add bulk and scale, do not obstruct views, cannot be seen from the public realm and do not add to shadow impacts. Having regard to the development standard in Clause 4.3 in NSLEP 2013 above. The proposed modifications would not substantively alter the bulk and scale of the approved development when viewed in the streetscape and are considered acceptable.</p>	Acceptable

<p>2F - Building Separation</p>	<p><i>Minimum separation distances for buildings are: Up to four storeys (approximately 12 m):</i></p> <ul style="list-style-type: none"> • 12 m between habitable rooms/balconies (6m to boundary) • 9 m between habitable and non-habitable rooms (4.5m to boundary) • 6 m between non-habitable rooms (3m to boundary) 	<p>There are no changes proposed to the approved building separation and setbacks from property boundaries shared with residential developments.</p>	<p>Acceptable</p>
<p>3D- Communal Open Space</p>	<p><i>Communal open space has a minimum area equal to 25% of the site.</i></p> <p><i>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3.00 pm on 21 June (mid-winter)</i></p> <p><i>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting</i></p> <p><i>Communal open space is designed to maximise safety</i></p>	<p>There are minor changes proposed to the approved communal open space area.</p> <p>Council Planning Comment: Table 4 of the planning statement which accompanies the modification application states an increase in common open space from 169m² (9.9%) to 171m² (10.1%).</p> <p>Council in their preliminary assessment letter dated 04 September 2023 stated that it was unclear from the submitted plans the location of the common open space. Gyde Consulting responded to the RFI stating the approved/modified COS is within the southern setback. The area identified as COS comprises a variety of plant species including trees, ferns and grasses. The garden beds in the southern setback appear more as formalised gardens rather than identifiable, usable and accessible spaces for COS.</p> <p>It is also noted that the communal room located in the ground level parking area is reduced in size under the current modification application compared to that approved under DA 86/22 (LEC No. 2022/165233). Council sought for the communal room to remain as previously approved by the LEC noting the shortfalls in COS and the reduced size of the communal room providing insufficient internal amenity contrary to design guidance in Objective 3D-1 of the ADG.</p> <p>A condition of consent is therefore recommended requiring amendments to the Ground Floor Parking Area to improve the size of the internal communal room.</p>	<p>Acceptable subject to condition</p>

		<p>C50. Ground Level Parking Design Change</p> <p>The communal room is to be enlarged to the west by approximately 1.2m, the DDA car parking space relocated to the west to accommodate for the enlarged communal room and the car parking space adjacent to the visitor car parking for use as a storage cage will be redesigned as both a space for motorbike parking and storage cage.</p> <p>Below are annotations detailing the proposed amendments subject to approval by Council’s Manager Development Services.</p>	
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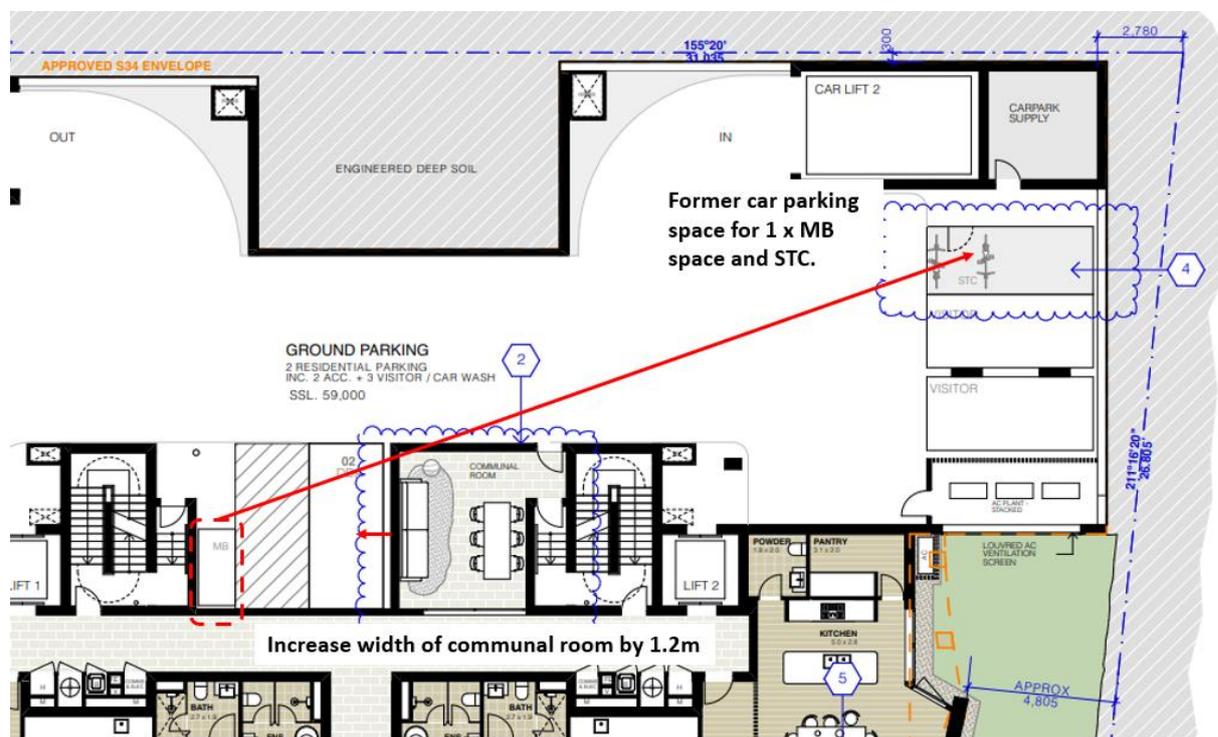


Figure 43 – Proposed modified Ground Floor Plan (DA 2002 Rev F) detailing amendments subject to Condition of Consent.

<p>3E - Deep Soil Zones</p>	<p>Deep soil zones are to meet the following minimum requirements:</p> <ul style="list-style-type: none"> • 3 m minimum width • Minimum 7% of the site area <p>Design Guidance 15% of the site where the site area is greater than 1,500 sqm</p>	<p>There are no changes proposed to the approved provision of deep soil.</p> <p>Council Planning Comment: the site was approved with a deep soil area of 369m² (21.7%). The proposed deep soil area subject to this modification application is 361m² (21.2%) as stipulated in the Landscape Calculation (DA 9102 Rev F).</p>	<p>Yes</p>
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		The deep soil complies with the minimum 7% deep soil stipulated in Design Criteria 1 of Objective 3E-1 in the ADG as well as the 15% minimum requirements in the associated design guidance.										
3F - Visual privacy	<p><i>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</i></p> <table border="1"> <thead> <tr> <th>Building Height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> </tbody> </table>	Building Height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	There are no changes proposed to the approved building separation.	Acceptable
Building Height	Habitable rooms and balconies	Non-habitable rooms										
Up to 12m (4 storeys)	6m	3m										
Up to 25m (5-8 storeys)	9m	4.5m										
3G - Pedestrian Access and Entries	<p><i>Building entries and pedestrian access connects to and addresses the public domain</i></p> <p><i>Access, entries and pathways are accessible and easy to identify</i></p>	The proposed modifications include changes to the front entry of the building to improve the accessibility of the development. Conditions regarding the reconstruction of the sandstone wall will be modified accordingly.	Yes									
3H - Vehicle Access	<p><i>Vehicle access points are designed and located to achieve safety, minimise conflicts bet-ween pedestrians and vehicles and create high quality street-scapes</i></p>	There are no changes proposed to the approved vehicle access arrangements.	Yes									
3J - Bicycle and Car parking	<p><i>For development in the following locations:</i></p> <ul style="list-style-type: none"> <i>• on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or</i> <i>• on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</i> <p><i>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</i></p> <p><i>The car parking needs for a development must be provided off street Parking and facilities are provided for other modes of transport</i></p>	Council Planning Comment: due to the change in housing mix within the development a maximum 27 residential car spaces should be provided including a minimum 4 accessible car spaces. The car parking provision totals 27 residential car spaces which complies with the minimum car parking requirements stipulated in Table B-10.1, s10.2 of NSDCP 2013 (refer to below Assessment Table).	Yes									

North Sydney Local Environmental Plan 2013 – Section 10 Car Parking and Transport Assessment Table					
Requirement	Approved DA No. 86/22	Complies	Requirement	Modification Application No. 86/22/2	Complies
1-2 Bedrooms – 1 space per dwelling 4 x 2 bedroom units = 4 car parking spaces 3 + Bedrooms – 1.5 spaces per dwelling 17 x 3 bedroom units = 26 car parking spaces Maximum 30 car spaces	Condition G21 of consent was approved allocating 29 parking spaces including 4 accessible spaces.	Yes – compliant with the maximum 30 car spaces	1-2 Bedrooms – 1 space per dwelling 6 x 2 bedroom units = 6 car parking spaces 3 + Bedrooms – 1.5 spaces per dwelling 14 x 3 bedroom units = 21 car parking spaces Maximum 27 car spaces	The applicant seeks to update condition G21 of consent allocating 27 parking spaces including 7 accessible spaces.	Yes – the provision of 27 parking spaces for residential use complies with the maximum 27 car spaces in accordance with the requirements of Table B-10.1, s10.2.1 of the NSDCP 2013.
Visitor – 0.25 spaces per dwelling (maximum) 0.25 x 21 units = 6 visitor car spaces	Condition G21 of consent was approved allocating 4 visitor parking spaces excluding the car wash bay	Yes – compliant with the maximum 6 car spaces	Visitor – 0.25 spaces per dwelling (maximum) 0.25 x 20 units = 5 visitor car spaces	The applicant seeks to update condition G21 of consent allocating 3 visitor spaces.	Yes – compliant with the maximum 5 car spaces
Car wash bay – may comprise a visitor car space	A car wash bay was detailed on the approved Ground Floor Plan (DA 2002 Rev C)	Yes	Car wash bay – may comprise a visitor car space	A car wash bay is detailed on the approved Ground Floor Plan (DA 2002 Rev F)	Yes
Adaptable Housing – at least one accessible space per dwelling	Condition G21 of consent was approved allocating 29 parking spaces including 4 accessible spaces.	Yes – 1 car space per adaptable dwelling.	Adaptable Housing – at least one accessible space per dwelling	The applicant seeks to update Condition G21 of consent to allocate 29 parking spaces including 4 accessible spaces.	Yes – it is noted the basement plans including ground floor parking allocated 7 car spaces for accessible parking for the 4 adaptable units.
Motorcycles at minimum rate of 1 space per 10 cars	The development was approved with 4	Yes	Motorcycles at minimum rate of 1 space per 10	The modification application seeks 5 motorbike spaces (2 in Basement	Yes – 5 motorbike spaces are proposed compliant with the minimum

	motorbike spaces		cars	Level 1 & 2 x Basement Level 2 & 1 in Ground Level Parking)	4 spaces stipulated in the DCP.
Bicycle parking rates – 1 per dwelling	The development was approved with 21 bicycle parking spaces as per Condition C13 of Consent.	Yes	Bicycle parking rates – 1 per dwelling	The applicant seeks to amend Condition C13 of consent to 20 bicycle parking spaces.	Yes
Visitor Bicycle rates – 1 per 10 dwellings	The development was approved with 3 visitor bicycle parking spaces as per Condition C13 of Consent.	Yes	Bicycle parking rates – 1 per dwelling	The applicant seeks to amend Condition C13 of consent to 2 visitor bicycle parking spaces.	Yes
Amenity	Design Criteria				
4A - Solar and daylight access	<i>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9.00 am and 3.00 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas</i>		80% of apartments would receive adequate solar access to living rooms and private open space areas which complies with this requirement.		Yes
4B - Natural ventilation	<i>All habitable rooms are naturally ventilated. The layout and design of single aspect apartments maximises natural ventilation. The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents - At least 60% of apartments are naturally cross ventilated</i>		100% of apartments are naturally cross ventilated which complies with this requirement.		Yes
4C - Ceiling Heights	<i>Ceiling height achieves sufficient natural ventilation and daylight access - Minimum 2.7 m (habit-able rooms), 2.4 m for second floor where it does not exceed 50% of the apartment area.</i>		Internal ceiling heights will remain as approved under DA 86/22 compliant with the minimum 2.7m.		Yes
4D 1 - Apartment size and layout	<i>Apartments are required to have the following minimum internal areas: 50 m² (1B), 70 m² (2B), 90 m² (3B) Additional bathrooms increase the minimum internal area by 5 m² each A fourth bedroom and further additional bedrooms increase the minimum internal area by 12 m² each</i>		The proposed modifications to the internal configuration of several apartments are intended to improve the layouts, accessibility and functionality of the apartments. The internal floor area and configurations of the apartments		Yes

	<i>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</i>	would continue to comply with these requirements. The apartments generally exceed these requirements.	
4D 2 - Apartment size and layout	<ol style="list-style-type: none"> 1. <i>Habitable room depths are limited to a maximum of 2.5 x the ceiling height</i> 2. <i>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</i> 	All apartments would continue to comply with these requirements.	Yes
4D 3- Apartment size and layout	<ol style="list-style-type: none"> 1. <i>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space)</i> 2. <i>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</i> 3. <i>Living rooms or combined living/dining rooms have a minimum width of:</i> <ul style="list-style-type: none"> • <i>3.6 m for studio and 1 bedroom apartments</i> • <i>4 m for 2 and 3 bedroom h</i> 	All bedrooms would continue to comply with these requirements.	Yes
4E - Private open space and balconies	<p><i>All apartments are required to have primary balconies as follows: Studio apartments – 4 m² 1 bedroom apartments – 8 m², minimum depth 2 m 2 bedroom apartments 10 m² minimum depth 2 m 3+ bedroom apartments 12 m² minimum depth 2.4 m</i></p> <p><i>The minimum balcony depth to be counted as contributing to the balcony area is 1.0 m</i></p> <p><i>2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15 m² and a minimum depth of 3 m</i></p> <p><i>Primary private open space and balconies are appropriately located to enhance liveability for residents.</i></p> <p><i>Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.</i></p> <p><i>Private open space and balcony design maximises safety.</i></p>	<p>The changes to the approved balconies and courtyards will achieve compliance.</p> <p>Below is a detailed study of the modified balconies and private open space for each apartment confirming the balconies substantially exceed the minimum requirements stipulated in the ADG.</p>	Yes

Apartment Design Guide – Objective 4E-1 Balconies and Private Open Space			
Requirement	Unit	Modification Application No. 86/22/2 – Area and Depth of Balcony	Complies
<i>2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15 m² and a minimum depth of 3 m</i>	001 - 3 Bed Ground Floor Unit	Area = 28m ² Minimum Depth = 3m	Yes
<i>2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15 m² and a minimum depth of 3 m</i>	002 - 3 Bed Ground Floor Unit	Area = 28m ² Minimum Depth = 3m	Yes
<i>3+ bedroom apartments 12 m² minimum depth 2.4 m</i>	Unit 101 3 Bed Level 1 Unit	Area = 19m ² Minimum Depth = 3m	Yes
<i>2 bedroom apartments 10 m² minimum depth 2 m</i>	Unit 102 2 Bed Level 1 Unit	Area = 19m ² Minimum Depth = 2.4m	Yes
<i>2 bedroom apartments 10 m² minimum depth 2 m</i>	Unit 103 2 Bed Level 1 Unit	Area = 19m ² Minimum Depth = 2.4m	Yes
<i>3+ bedroom apartments 12 m² minimum depth 2.4 m</i>	Unit 104 3 Bed Level 1 Unit	Area = 25m ² Minimum Depth = 3m	Yes
<i>3+ bedroom apartments 12 m² minimum depth 2.4 m</i>	Unit 201 3 Bed Level 2 Unit	Area = 20m ² Minimum Depth = 3m	Yes
<i>2 bedroom apartments 10 m² minimum depth 2 m</i>	Unit 202 2 Bed Level 2 Unit	Area = 19m ² Minimum Depth = 2.4m	Yes
<i>2 bedroom apartments 10 m² minimum depth 2 m</i>	Unit 203 2 Bed Level 2 Unit	Area = 19m ² Minimum Depth = 2.4m	Yes
<i>3+ bedroom apartments 12 m² minimum depth 2.4 m</i>	Unit 204 2 Bed Level 3 Unit	Area = 27m ² Minimum Depth = 3m	Yes
<i>3+ bedroom apartments 12 m² minimum depth 2.4 m</i>	Unit 301 2 Bed Level 3 Unit	Area = 22m ² Minimum Depth = 3m	Yes

2 bedroom apartments 10 m ² minimum depth 2 m	Unit 302 2 Bed Level 3 Unit	Area = 19m ² Minimum Depth = 2.4m	Yes
2 bedroom apartments 10 m ² minimum depth 2 m	Unit 303 2 Bed Level 3 Unit	Area = 19m ² Minimum Depth = 2.4m	Yes
3+ bedroom apartments 12 m ² minimum depth 2.4 m	Unit 304 3 Bed Level 3 Unit	Area = 27m ² Minimum Depth = 3m	Yes
3+ bedroom apartments 12 m ² minimum depth 2.4 m	Unit 401 3 Bed Level 4 Unit	Area = 22m ² Minimum Depth = 3m	Yes
3+ bedroom apartments 12 m ² minimum depth 2.4 m	Unit 402 3 Bed Level 4 Unit	Area = 37m ² Minimum Depth = 3m	Yes
3+ bedroom apartments 12 m ² minimum depth 2.4 m	Unit 403 3 Bed Level 4 Unit	Area = 27m ² Minimum Depth = 3m	Yes
3+ bedroom apartments 12 m ² minimum depth 2.4 m	Unit 501 3 Bed Level 5 Unit	Area = 80m ² Minimum Depth = 3m	Yes
3+ bedroom apartments 12 m ² minimum depth 2.4 m	Unit 502 3 Bed Level 5 Unit	Area = 37m ² Minimum Depth = 3m	Yes
3+ bedroom apartments 12 m ² minimum depth 2.4 m	Unit 503 3 Bed Level 5 Unit	Area = 27m ² Minimum Depth = 3m	Yes
4F - Common circulation and spaces	1. The maximum number of apartments off a circulation core on a single level is eight	The changes under this modification do not exceed this requirement.	Yes
4G - Storage	Studio apartments - 4 m ³ 1 bedroom apartments - 6 m ³ 2 bedroom apartments - 8 m ³ 3 + bedroom apartments - 10 m ³	Storage areas have been amended following Council concerns issued to the applicant. The original modification application sought in total 27 storage cages for the 20 apartments within the RFB. The number of storage cages has been amended to one storage cage per apartment compliant with Objective 4G-1 and Design Criteria 1 of the ADG.	Yes

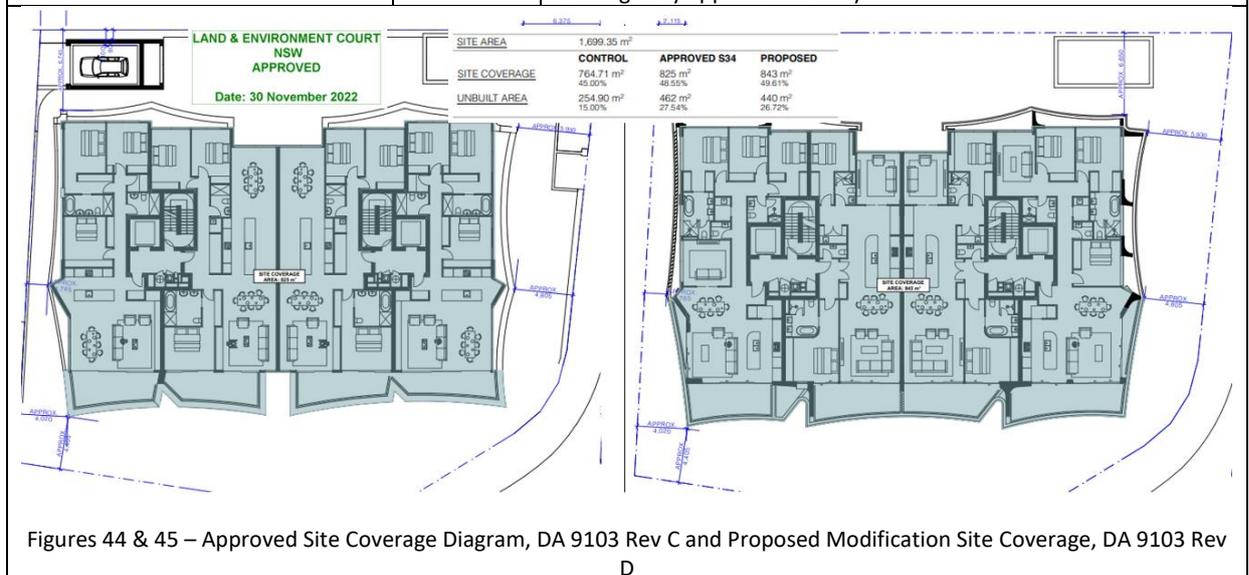
Overall, the proposal is satisfactory having regard to the design criteria specified in the Apartment Design Guide.

North Sydney Development Control Plan 2013

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013 PART B - SECTION 1 - Residential Development														
	Complies	Comments												
1.2 Function														
<p>Section 1.2.1 – Population Mix</p> <p>P3 Residential flat buildings containing 20 or more dwellings should provide a mix of dwelling sizes in accordance with Table B-1.1 unless the applicant can adequately demonstrate by an authoritative analysis of current and future market demand that the suggested mix is not reasonable.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="text-align: center;">TABLE B-1.1: Dwelling Mix</th> </tr> <tr> <th style="text-align: center;">Dwelling Size</th> <th style="text-align: center;">% of Total Dwellings</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Studio</td> <td style="text-align: center;">10-20%</td> </tr> <tr> <td style="text-align: center;">1 bedroom</td> <td style="text-align: center;">25-35%</td> </tr> <tr> <td style="text-align: center;">2 bedroom</td> <td style="text-align: center;">35-45%</td> </tr> <tr> <td style="text-align: center;">3 bedroom+</td> <td style="text-align: center;">10-20%</td> </tr> </tbody> </table>	TABLE B-1.1: Dwelling Mix		Dwelling Size	% of Total Dwellings	Studio	10-20%	1 bedroom	25-35%	2 bedroom	35-45%	3 bedroom+	10-20%	Yes	<p>The approved unit mix was 4 x 2 bedroom apartments and 17 x 3 bedroom apartment.</p> <p>The modified unit mix is 6 x 2 bedroom apartments and 14 x 3 bedroom apartments.</p> <p>The modification results in a greater diversity of apartment types than originally approved which is consistent with the intent of the control.</p>
TABLE B-1.1: Dwelling Mix														
Dwelling Size	% of Total Dwellings													
Studio	10-20%													
1 bedroom	25-35%													
2 bedroom	35-45%													
3 bedroom+	10-20%													
Section 1.2.2 - Universal Design and Adaptable Housing	Yes	There are no changes proposed to the provision of adaptable housing. The modifications improve accessibility to common spaces.												
Section 1.2.3 - Maintaining residential accommodation	N/A	<p>The provisions relating to the retention of residential accommodation were considered for the original application and acceptable.</p> <p>The modified proposal although reducing the number of dwellings maintains a density of residential accommodation as approved in the LEC determination No. 2022/165233.</p>												
Section 1.2.4 - Maintaining affordable housing	N/A	The provisions relating to the retention of affordable rental housing were considered for the original application and Condition 41 of Development Consent will remain requiring four (4) adaptable apartments to be designed with Australian Standard 4299-1995.												
1.3 Environmental criteria														
Section 1.3.1 - Topography	Yes	<p>Council Planning Comment:</p> <p>There are no changes proposed to the siting of the development. The extent of excavation on the northern edge of the Level 2 Lower basement was increased to accommodate additional storage and adjust for plant and services. However, it is noted the extended basement to the south is acceptable not having a significant increase in excavation and the additional excavation is offset by the reduced excavation required due to amendments to the basement entry/exit to Ben Boyd Road.</p> <p>The modification application was amended to retain the rectangular deep soil area to the northern boundary in response to Council's concerns regarding excessive excavation in close proximity to a boundary that adjoins a neighbouring site (100 Ben Boyd Road) and basement plans have been amended deleting additional car parking and storage cages to generally retain the footprint of the basement original consented by the LEC. Council's Engineer has assessed the modification and concluded no additional conditions are required regarding excavation.</p>												

Section 1.3.6 - Views	Yes	Having regard to the assessment made under the original application, the proposed modifications will not change the impacts to views enjoyed from surrounding properties (see Figures 35 and 36). The proposed modifications are largely consistent with the approved built form, and where the height of the building is proposed to be increased to accommodate rooftop plant, this will be screened by the lift overruns and landscaping.
Section 1.3.7 - Solar access	Yes	The proposed modifications are largely contained within the existing building envelope and would not result in any material additional overshadowing to adjoining properties. See Figures 37, 38 and 39.
Section 1.3.8 - Acoustic privacy	Yes	The proposed modifications would not give rise to any additional acoustic privacy impacts. The proposed modifications to the internal layouts of apartments and associated window fenestration are relatively minor and would be inconsequential to the amenity of the surrounding properties. Private open space areas do not significantly change and additional fin walls are proposed to separate private open space areas. Additional louvre screens are proposed to ensure privacy.
Section 1.3.9 - Vibration	Yes	The proposed modifications would not give rise to any potential additional vibration impacts. Existing conditions address the potential vibration impacts of plant and equipment and the requirements for additional information with a Construction Certificate.
Section 1.3.10 - Visual privacy	Yes	The proposed modifications would not give rise to any additional visual privacy impacts. The proposed modifications to the internal layouts of apartments, associated window fenestrations and external privacy treatments are consistent with the approved development and are relatively minor in nature. The proposed modifications include additional privacy screens for some apartments which would further improve the privacy between the apartments and surrounding properties.
1.4 Quality Built Form		
Section 1.4.5 - Siting	Yes	There are no changes proposed to the siting of the building.
Section 1.4.6 - Front Setback	Yes	There are no changes proposed to the front setback with the exception of an increase in the setback to the south east corner from 2.1m to 2.7m.
Section 1.4.6 - Setbacks (Side and Rear) Section 1.4.4 - Laneway	Yes	There are no changes proposed to the building side setbacks.
Section 1.4.7 - Form, massing and scale	Yes	There is no substantive change to the form, massing and scale of the development subject to Condition C51 Balconies.
Section 1.4.8 - Built form character	Yes	The proposed modifications would not significantly alter the built form, character of the development. The proposed changes to fenestration, balconies, external privacy treatments and solar shadowing devices are consistent with the approved façade design.
Section 1.4.9 - Building entry	Yes	There are no changes proposed to the location of the building entry, however, the front entry path has been redesigned to provide improved accessibility of the development.
Section 1.4.10 - Roofs	Yes	There are no changes proposed to the roof form.
Section 1.4.12 - Colours and materials	Yes	There are no changes proposed to the approved materials and finishes schedule.
Section 1.4.13 - Balconies - apartments	Yes	There are alterations to the originally approved balconies in part due to the internal unit layout and configuration. The modification application also seeks an increase in size of balconies and the table within ADG assessment confirms a generous provision in balconies.
Section 1.4.14 - Front fences	Yes	There are minor changes proposed to the approved front sandstone wall to provide appropriate accessible access/exit from the site ensuring the sandstone continues to contribute to the character and appearance of the public domain.
1.5 Quality urban environment		
Section 1.5.1 - High quality residential accommodation	Yes	These provisions largely mirror the ADG requirements and are considered to be satisfactorily achieved as outlined above (Refer to ADG compliance table above).

Section 1.5.3 - Safety and security	Yes	There are no changes proposed that would detract from the safety or security of the development.
Section 1.5.4 - Vehicle Access and Car Parking	Yes	There are no changes proposed to the vehicle access. Car parking spaces have been amended to comply with the parking requirements stipulated in Section 10 of NSDCP 2013.
Section 1.5.5 - Site Coverage Section 1.5.6 - Unbuilt Area and Landscaped Area	No (Merit assessment below) Yes	Approved site coverage = 48.55% (825m ²) Modified site coverage = 49.61% (843m ²) Approved Landscaped Area = 41.4% Modified Landscaped Area = 41.4% Conditions are recommended for the original landscape plan to be implemented and therefore the approved landscape quality and quantity will be unchanged. Approved unbuilt upon area = 27.54% Modified unbuilt upon area = 26.72% The minor change is a result of changes to the external walls to achieve constructability compliant with engineering requirements and the change is considered acceptable as it will not detract from the quality of the original approved landscape plan.
Section 1.5.5 - Site Coverage	Merit (Acceptable subject to condition)	The modification application seeks an additional site coverage of 18m ² increasing the site coverage exceedance to 49.61% which is 4.61% greater than the minimum 45% stipulated in Table B-1.6, s1.5.5 of NSDCP 2013. A request for amended plans to the applicant required amendments to the size of the balconies and a reduction in site coverage to not result in an increased site coverage noting the RFB as approved already exceeds the maximum 45% site coverage. Site coverage controls are identified in s1.8 'Introduction' of the NSDCP 2013 as a key development control to be complied with in any development and this was outlined to the applicant in a letter to the applicant dated 04 September 2023. It is recommended a design condition (C51 Balconies) is applied to the conditions of consent requiring deletion of the side balconies to revert to a louvre roof as originally consented and a deletion of the extended balcony on the western side of Level 5 serving Unit 501 to revert to the originally approved balcony.



Figures 44 & 45 – Approved Site Coverage Diagram, DA 9103 Rev C and Proposed Modification Site Coverage, DA 9103 Rev D



Figures 46, 47 & 48 – Overlaid Proposed and Approved Site Coverage Diagram, DA 9103 Rev F annotated in red by Gyde and annotated in purple by Council Assessment Officer (left) and Proposed Modification detailing additional balcony to Level 5, DA 2007 Rev F (middle) and Approved Level 5 with balconies, DA 2007 Rev C (right)

Section 1.5.9 - Private and Communal Open Space	Yes	There are minor changes proposed to the approved communal open space. Private open space arrangements have been adjusted for the new apartment layouts and exceed or meet the ADG requirements.
Section 1.5.12 - Garbage storage	Yes	There are no changes proposed to the capacity of the waste management arrangements or facilities. The modifications improve the efficiency of the layout and serviceability.
Section 1.5.13 - Site Facilities	Yes	The modifications are partly in response to incorporation of services and site facilities and the minor adjustments are considered acceptable and substantially the same as the originally approved development.
1.6 Efficient use of resources		
BASIX	Yes	A valid revised multi-dwelling BASIX certificate has been provided.

CHARACTER STATEMENTS - PART C

The subject site is located within the Forsyth Neighbourhood of the **Neutral Bay Planning Area**.

The proposed modifications would not detract from the character of the area having regard to the desire future character and desired built form identified in Sections 7.0 and 7.1 of the character statement of Part C in NSDCP 2013.

NORTH SYDNEY LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The North Sydney Local Infrastructure Contributions Plan 2020 has been developed in accordance with s7.11 and s7.12 of the *Environmental Planning and Assessment Act 1979*.

A further contribution is not applicable because the development has already been subject to a contribution levy. A monetary contribution was calculated for the original consent and a condition of consent (C42 – Section 7.11 Contributions) required the payment of **\$128,783.92** levy based on the cost of development. The proposed modifications would not notably increase the cost of works and therefore the existing condition remains appropriate.

Consequently, no further contribution is required.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

ENVIRONMENTAL APPRAISAL	CONSIDERED
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	Yes
5. Traffic generation and Carparking provision	Yes
6. Loading and Servicing facilities	Yes
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	Yes
9. All relevant s4.15(1) considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

SUBMITTERS CONCERNS

The subject application was notified to adjoining properties and the Neutral Precinct inviting comment between 12 May – 26 May 2023. There were no submissions raised following notification of the modification application.

SITE SUITABILITY

The subject site is considered to be suitable for the proposed development as modified.

PUBLIC INTEREST

There are no matters raised in which approval of the application would not be in the public interest.

HOW THE COMMUNITY VIEWS WERE TAKEN INTO CONSIDERATION

The application has been notified in accordance with Council's Community Consultation Plan with adjoining properties and the Neutral Bay Precinct notified between 12 May to 26 May 2023. In response to the notification Council received no submissions to the proposal.

CONCLUSION + REASONS

The modification application meets the requirements of Section 4.56 of the Act and the assessment has taken into consideration reasons for approval of the original application and the matters for consideration outlined in Section 4.15(1) of the Act, which have been satisfied. The proposed development is permissible, meets the development standards and relevant provisions of NSLEP 2013, except for the height of buildings development standard in Clause 4.3, and is generally in accordance with the objectives of the ADG and NSDCP 2013.

The proposed modifications resulting in additional enclosed plant and equipment on the rooftop above the 12m height control standard in Clause 4.3 in NSLEP 2013 have been considered having regard to the reasons for approval of the original application and have been assessed having regard to the objectives of the development standard itself. The proposed modifications are consistent with the objectives given that the proposed roof modifications would not substantively alter the bulk and scale of the approved development and would not give rise to any additional material impacts on the amenity of the surrounding properties or the character of the area.

The proposed modifications are consistent with the approved development and primarily involve improvements to the layout and function of the apartments, construction standards to meet NCC, engineering standards and efficient function and layout of building services, plant and equipment derived from the detailed construction documentation of the development which typically occurs in the preparation of the construction certificate. Other modifications are to the internal layout of the apartments in response to DDA review and with consideration to the demand for larger, three bedroom apartments in the local market.

Design amendments are sought with respect to increasing the size of the communal internal room to be larger commensurate with that originally approved and to ensure an appropriately sized communal room is provided noting the shortfalls in Common open space and the benefits a communal room can provide in delivering sufficient internal amenity in accordance with design guidance in Objective 3D-1 of the ADG. Furthermore, a design amendment is sought to delete balconies and amend the size of the Level 5 balcony to prevent any further exceedance in site coverage which is a key control as identified in s1.8 'Introduction' of the NSDCP 2013.

The application is therefore considered reasonable and is recommended for approval.

RECOMMENDATION

PURSUANT TO SECTION 4.16 OF *ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979* (AS AMENDED)

THAT the North Sydney Local Planning Panel, exercising the functions of Council, as the consent authority, under Section 4.56 of the *EP&A Act* grant consent to modify Development Consent DA86/2022/2 for consolidation of 2 lots, demolition of existing structures, excavation and construction of a six-storey residential flat building containing 20 apartments over two levels of basement parking and parking at grade, landscaping and associated works at 96-98 Ben Boyd Road, Neutral Bay as follows:

Add Conditions A7, C50 and C51 as follows:

Development in accordance with Plans (s4.55 Amendments)

- A7.** The development being carried out in accordance with plans identified in Condition A1 of the consent endorsed with Council's approval stamp, except as modified by the modifications shown on:

Plan No.	Rev	Title	Drawn by	Received
DA 0000	F	Cover Page	MHNDUNION	12/09/2023
DA 0001	F	Project Summary	MHNDUNION	12/09/2023
DA 1000	F	Site Context	MHNDUNION	12/09/2023
DA 1001	F	Site Analysis	MHNDUNION	12/09/2023

DA 1002	F	Site Plan	MHNDUNION	12/09/2023
DA 1003	F	Demolition Plan	MHNDUNION	12/09/2023
DA 2000	F	Basement 02 Plan	MHNDUNION	12/09/2023
DA 2001	F	Basement 01 Plan	MHNDUNION	12/09/2023
DA 2002	F	Ground Floor Plan	MHNDUNION	12/09/2023
DA 2003	F	Level 1 Floor Plan	MHNDUNION	12/09/2023
DA 2004	F	Level 2 Floor Plan	MHNDUNION	12/09/2023
DA 2005	F	Level 3 Floor Plan	MHNDUNION	12/09/2023
DA 2006	F	Level 4 Floor Plan	MHNDUNION	12/09/2023
DA 2007	F	Level 5 Floor Plan	MHNDUNION	12/09/2023
DA 2008	F	Roof Plan	MHNDUNION	12/09/2023
DA 3000	F	North Elevation	MHNDUNION	12/09/2023
DA 3001	F	South Elevation	MHNDUNION	12/09/2023
DA 3002	F	East Elevation	MHNDUNION	12/09/2023
DA 3003	F	West Elevation	MHNDUNION	12/09/2023
DA 3100	F	Section A	MHNDUNION	12/09/2023
DA 3101	F	Section B	MHNDUNION	12/09/2023
DA 6000	F	External Finishes 01	MHNDUNION	12/09/2023
DA 6001	F	External Finishes 02	MHNDUNION	12/09/2023
DA 9100	F	SEPP 65 – Solar & Cross Ventilation	MHNDUNION	12/09/2023
DA 9101	F	SEPP 65 - Storage	MHNDUNION	12/09/2023
DA 9102	F	Landscape Calculation	MHNDUNION	12/09/2023
DA 9103	F	Site Coverage Diagram	MHNDUNION	12/09/2023
DA 9104	F	Height Plane Diagram	MHNDUNION	12/09/2023
DA 9300	F	Waste Management Plan	MHNDUNION	12/09/2023
DA 9301	F	Adaptable Unit Layout	MHNDUNION	12/09/2023
Landscape plans				
Page 21	F	Concepts Landscape Plan	Arcadia Landscape Architecture	13/04/2023
Page 22	F	Concepts Entry Forecourt	Arcadia Landscape Architecture	13/04/2023
Page 23	F	Concepts Entry Forecourt	Arcadia Landscape Architecture	13/04/2023
Page 24	F	Concepts Private Courtyard	Arcadia Landscape Architecture	13/04/2023
Page 25	F	Concepts Private Courtyard	Arcadia Landscape Architecture	13/04/2023
Page 26	F	Concepts Sandstone Edge Conditions	Arcadia Landscape Architecture	13/04/2023
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(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Infrastructure)

Ground Level Parking Design Change

- C50.** The communal room is to be enlarged to the west by approximately 1.2m, the DDA car parking space is to be relocated to the west to accommodate for the enlarged communal room and the car parking space adjacent to the visitor car parking for use as a storage cage will be redesigned as both a space for motorbike parking and storage cage.

The Ground Floor Plan must be submitted to Council for the written approval of Councils Assessment Team Leader prior to the issue of any construction certificate.

(Reason: To ensure appropriate provision of internal common space and appropriate provision of parking and storage)

Balconies

- C51.** The proposed side balconies to the western and eastern elevations on Levels 1 – 5 are to be deleted and replaced with a louvre roof as originally approved in plans within A1 of the determination for DA 86/22 – LEC No. 2022/165233. The balconies referred to in this condition are clouded in red on the approved plans in A7 of this modification application consent.

The Level 5 balcony on the western side of the building (Unit 501) is not approved and shall remain as per the balcony approved under determination for DA 86/22 – LEC No. 2022/165233. The respective balcony subject to design amendments is clouded in red on Level 5 Floor Plan, DA 2007 Rev F.

The floor plans (Levels 1 – 5) must be submitted to Council for the written approval of Councils Assessment Team Leader prior to the issue of any construction certificate.

(Reason: To ensure control the site density and minimise additional exceedance in site coverage)

Modify Conditions A5, C13, C31, C44, C49 and G21 as follows:

Works to Stone Wall

- A5.** All works to the stone wall at the Ben Boyd boundary of the site are to follow the methodology provided in the Stone Wall Reconstruction Methodology, John Outram Heritage Design, dated 21 November 2022. The works are to be guided by a suitably qualified heritage consultant and undertaken by a stonemason experienced in heritage work. Any variation to the works methodology will be notified in writing to the manager of development services and will require sign off by the manager of development services within Council.

FBHV Cabinet - The proposed new fire services cabinet to be located within the sandstone wall is to be painted in a visually submissive colour that is sympathetic to the sandstone wall.

(Reason: To ensure the appropriate conservation of the stone wall.)

Bicycle Storage and Parking

C13. The bicycle storage area must accommodate a minimum of ~~21~~ **20** bicycles, and a visitor parking bicycle rail shall be provided for ~~3~~ **2** visitor bicycles. The bicycle storage lockers and bicycle rail shall be designed in accordance with the applicable Australian Standards. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate. The Certifying Authority must ensure that the building plans and specifications, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To promote and provide facilities for alternative forms of transport)

Location of Plant

C31. **Except where shown on the approved plans identified in condition A7,** All plant and equipment (including but not limited to air conditioning equipment) is to be located within the basement of the building or adjoining the car park lift shaft and is not to be located on balconies or the roof. Fireplace flues to roof areas are permitted (in accordance with Condition C10). Plans and specifications complying with this condition must be submitted to the Certifying Authority for Approval prior to the issue of the relevant Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Minimise impact on surrounding properties, improved visual appearance and amenity for locality)

BASIX Certificate

C44. Under clause **75** of the *Environmental Planning and Assessment Regulation 2021*, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. ~~1273153M_03, dated 21 November 2022~~ **1273153M_04 dated 4 April 2023**, for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

Pedestrian Sight Distance at Vehicular Exit Driveway

- C49.** A pedestrian sight triangle of 2.0 metres by 2.5 metres is to be provided on both sides of the vehicular egress driveway in accordance with AS2890.1:2004. Any variation to this sight distance requirement would need to be assessed by an appropriately qualified traffic engineer and supplemented with additional traffic control devices such as convex mirrors at the egress (within the site) to assist with sight lines, with the variation to not result in any detrimental impact in terms of pedestrian safety. Details demonstrating compliance with the requirements of this condition are to be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

(Reason: To ensure pedestrian safety at the site exit driveway)

Allocation of Spaces

- G21.** Car parking spaces must be provided and maintained at all times on the subject site. The spaces shall be allocated to uses within the building in accordance the following table:

Residential	Parking Spaces
Residential (including 4 accessible spaces)	27
Visitor (excluding carwash bay)	3
Total	30 spaces

The car parking spaces are to be identified on-site by line-marking and numbering upon the completion of the works and prior to issue of Occupation Certificate. Car parking spaces provided must only be used in conjunction with the approved uses contained within the development.

In the case of Strata subdivision any car parking for strata lots for residential purposes must be individually allocated to its corresponding residential strata lot as part of each lots' unit entitlement.

Visitor parking facilities must be designated as common property on the strata plan. Visitor parking facilities must not at any time be allocated, sold, licensed or leased for the exclusive use of any occupier or owner and must be retained as common property by the Owners Corporation for use by building visitors.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

Planning Ingenuity / Thomas Holman
Consultant Planner/ Assessment Officer

Isobella Lucic
TEAM LEADER ASSESSMENTS

Stephen Beattie
MANAGER OF DEVELOPMENT SERVICES

Date: