

OUR REF: JOB NO. 22203 – S4.55(8)

28 October 2024

Waverley Council  
The General Manager  
PO Box 9, Bondi Junction 1355

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**Attention:** Bridget McNamara

Dear Bridget,

**RE: SECTION 4.55(8) MODIFICATION FOR DEVELOPMENT APPLICATION (DA-285/2023)  
NO. 1-7 ANDREWS AVENUE AND 26 GLEN STREET, BONDI**

This Section 4.55(8) Modification has been prepared for Andrews AV Pty Ltd by George Karavanas Planning Pty Ltd – (hereafter referred to as GSA Planning). On behalf of the applicant, we hereby seek approval for a Section 4.55(8) modification of the approved (DA No. 285-2023) at No. 1-7 Andrews Avenue and 26 Glen Street, Bondi ('the subject site').

This application seeks to modify Condition 1, 2, 63, 64 and 67 of the development consent to reflect the updated plans and documentation submitted with this application. The proposed modifications relate to refinements to the approved building design, including internal updates to enhance residential amenity and the functionality of the building. A number of the changes are provided to comply with advice from the consulting engineers, and the conditions of the DA consent. Importantly, the modified proposal retains the external envelope of the approved building, and this ensures the development continues to be compatible with the existing and desired future character of the locality and preserves approved levels of amenity for neighbours.

The proposed modification will maintain the approved building height, front, side and rear setbacks. While there will be a numerical increase in GFA, this will be within the approved envelope or at the rear of the property, and thus will not alter the perceived bulk and scale of the development from the approval. The proposal will continue to comply with the landscaping and deep soil controls of the DCP and will maintain a high-quality, contemporary built form character. This will ensure the development remains a positive contribution to the area.

The proposed development is the subject of a Section 4.55(8) modification and not a new development application. This is because the proposal is substantially the same as the approved development and generally retains the overall built form and external envelope of the approved residential flat building development.

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

## 1.0 SITE ANALYSIS

### *The Site*

The subject site is approximately 6km south-east of the Sydney CBD, 2km from Bondi Junction Centre and is within the Local Government Area (LGA) of Waverley (see **Figure 1**).

The subject site is located on the southern side of Andrews Avenue and the northern side of Glen Lane and is known as Nos. 1, 3, 5 and 7 Andrews Avenue and 26 Glen Street, Bondi. The lots are legally described as Lot 1 in DP79716 (No. 1), Lot 1 in DP1042187 (No. 3), Lot 1 in DP216695 (No. 5), Lot 2 in DP216695 (No. 7), Lot 1 in DP552406 and Lot 1796 in DP822255 (No. 26).

The site is an L-shaped parcel of land, with a combined northern frontage to Andrews Avenue of 28.865 metres, a combined eastern boundary of 66.76 metres, a southern boundary of 35.725 metres, and a western boundary of 50.02 metres, providing a total site area of 1,635.36m<sup>2</sup> or 1,647.06m<sup>2</sup> by calc (see Survey Plan submitted with the DA).



Source: SIX Maps

 Subject Site

**Figure 1: Location Plan**



The site is occupied by three x detached dwelling houses and two x semi-detached dwelling houses. The existing built forms and landscaping are described below:

- **No. 1 Andrews Avenue** is a one storey detached dwelling with hipped and flat roofs (see **Photograph 1**). At the rear is a lawn, pool, and a garage with a studio above. The property has its main pedestrian entry from Andrews Avenue and vehicular access from Glen Lane.
- **No. 3 Andrews Avenue** is a one to two storey detached dwelling with a metal roof and dormers (see **Photograph 2**). At the rear is a lawn, several trees and palms, and a one storey studio building with a pitched roof. The property has pedestrian access from Andrews Avenue and does not have vehicular access or on-site parking.
- **No. 5 Andrews Avenue** is a one to two storey semi-detached dwelling with a pitched and flat metal roof (see **Photograph 3**). At the rear is a lawn, a tree, and a timber shed with a metal roof. The property has pedestrian access from Andrews Avenue and does not have vehicular access or on-site parking.
- **No. 7 Andrews Avenue** is a one storey semi-detached dwelling with a pitched and flat metal roof, with a lawn, trees and a palm along the rear boundary (see **Photograph 4**). The property has pedestrian access from Andrews Avenue and does not have vehicular access or on-site parking.
- **No. 26 Glen Street** is a one storey dwelling with a hipped tiled roof (see **Photograph 5**). It includes a lawn, trees along the southern boundary, and a one storey garage with a hipped roof. The property has both pedestrian and vehicle access from Glen Lane.



**Photograph 1:** No. 1 Andrews Avenue, as viewed from Andrews Avenue



**Photograph 2:** No. 3 Andrews Avenue, as viewed from Andrews Avenue



**Photograph 3:** No. 5 Andrews Avenue, as viewed from Andrews Avenue



**Photograph 4:** No. 7 Andrews Avenue, as viewed from Andrews Avenue



**Photograph 5:** No. 26 Glen Street, as viewed from Glen Lane

### ***The Surrounds***

The surrounding area is built-up in nature. It is characterised a mixture of one to two storey detached and semi-detached dwellings, and two to four storey residential flat buildings. Buildings typically have minimal setbacks to the side boundaries. Residential flat buildings in the immediate surrounds are mostly face brick with hipped roofs and ground level parking. However, there are contemporary buildings along the street and in the wider area, including the dual occupancy at Nos. 9-11 Andrews Avenue and the newly completed residential flat building at No. 14 Fletcher Street.

### **Development to the North**

To the north, on the opposite side of the street, is Nos. 2-12 Andrews Avenue, a three storey face brick residential flat building with a hipped roof, containing eighteen units (see **Photograph 6**). To the north-west is No. 16 Glen Street, a two storey face brick residential flat building with a hipped roof located above garaging (see **Photograph 7**). Further beyond are more residential flat buildings ranging between three and ten storeys on Bondi Road.



**Photograph 6:** Nos. 2-12 Andrews Avenue, as viewed from Andrews Avenue



**Photograph 7:** No. 16 Glen Street, as viewed from Andrews Avenue

### **Development to the East**

To the east is Nos. 9-11 Andrews Avenue, a three storey contemporary attached dual occupancy, approved in 2021 (DA-59/2021) (see **Photograph 8**). Also to the east are the rears of Nos. 35 and 37 Dudley Street, a pair of two storey semi-detached dwellings with hipped roofs (see **Photograph 9**). Beyond are more pairs of semi-detached dwellings along Dudley Street.





**Photograph 8:** Nos. 9-11 Andrews Avenue, as viewed from Andrews Avenue



**Photograph 9:** Nos. 35 and 37 Dudley Street, as viewed from Dudley Street

### Development to the South

To the south is the rear of No. 28-30 Fletcher Street, a four storey residential flat building with a flat roof and basement parking (see **Photograph 10**). Also to the south is the rear of No. 26 Fletcher Street, a three to four storey face brick residential flat building with a hipped roof, located above garaging (see **Photograph 11**); and No. 28 Glen Street, a one storey dwelling with a pitched roof. Beyond are more detached and semi-detached dwelling houses and residential flat buildings along Fletcher Street.



**Photograph 10:** No. 28-30 Fletcher Street, as viewed from Fletcher Street



**Photograph 11:** No. 26 Fletcher Street, as viewed from Fletcher Street

### Development to the West

To the west are the rears of Nos. 18, 20, 22 and 24 Glen Street. These properties each contain three storey face brick residential flat buildings with hipped roofs, located above garaging (see **Photographs 12 & 13**). Beyond are more residential flat buildings and a dwelling house on Glen Street.



**Photograph 12:** Nos. 18 and 20 Glen Street, as viewed from Glen Street



**Photograph 13:** Nos. 22 and 24 Glen Street, as viewed from Glen Street

## 2.0 BACKGROUND

On **13 October 2023**, a Development Application (DA-285/2023) was submitted with Waverley Council for the demolition of the existing structures and construction of a new four storey residential flat building with integrated basement parking, three swimming pools at the rear and associated landscape works at the subject site.

On **2 October 2024**, DA-285/2023 was approved by the NSW Land and Environment Court (LEC) subject to conditions of consent.

## 3.0 REQUESTED MODIFICATIONS TO DEVELOPMENT CONSENT

As indicated, this submission proposes modification to DA-285/2023 This will be discussed below:

### 3.1 Condition 1 - Approved Plans and Documentation

Condition 1 of the development consent relates to the approved architectural plans and documentation. The existing conditions is as follows:

#### **Existing Condition:**

*The development must be in accordance with:*

- (a) *Architectural Plans prepared by MHNDUNION of Project No: 22-029 including the following:*

<b>Plan Number and Revision</b>	<b>Plan description</b>	<b>Plan Date</b>	<b>Date received by Council</b>
DA 2000, Rev H	Context Plan	08.08.2024	20.08.2024
DA 2001, Rev H	Basement Plan	08.08.2024	20.08.2024
DA 2002, Rev H	Ground Floor Plan	08.08.2024	20.08.2024
DA 2003, Rev H	Level 1 Floor Plan	08.08.2024	20.08.2024
DA 2004, Rev H	Level 2 Floor Plan	08.08.2024	20.08.2024
DA 2005, Rev H	Level 3 Floor Plan	08.08.2024	20.08.2024
DA 2006, Rev H	Roof Plan	08.08.2024	13.08.2024
DA 3000, Rev H	North Elevation	08.08.2024	20.08.2024
DA 3001, Rev H	South Elevation	08.08.2024	20.08.2024
DA 3002, Rev H	East Elevation	08.08.2024	20.08.2024
DA 3003, Rev H	West Elevation	08.08.2024	20.08.2024
DA 3100, Rev H	Section A	08.08.2024	20.08.2024
DA 3101, Rev H	Section B	08.08.2024	20.08.2024
DA 3102, Rev H	Section C Contentions	08.08.2024	13.08.2024
DA 3103, Rev H	Section D Contentions	08.08.2024	13.08.2024
DA 3104, Rev H	Section E Contentions	08.08.2024	13.08.2024
DA 3105, Rev H	Detailed Section 1	08.08.2024	13.08.2024
DA 3106, Rev H	Detailed Section 2	08.08.2024	13.08.2024

- (b) *Landscape Plan Nos. LS01 to LS010, inclusive, Issue E, dated 12 August 2024 and received by Council on 23 August 2024, prepared by Melissa Wilson Landscape Architects*
- (c) *BASIX and NatHERs Certificate/s*
- (d) *Preliminary Site Investigation Report (Refence No. E26309.E01\_Rev0) prepared by EI Australia, dated 5 April 2024 and received by Council on 10 May 2024*
- (e) *Traffic Impact Assessment, dated 21 August 2023, prepared by Traffix and received by Council on 12 October 2023*
- (f) *Arboricultural Impact Assessment and Management Plan prepared by Botanica Pty Ltd dated June 2023, and received by Council on 12 October 2023*

- (g) Schedule of external finishes and colours, Drawing No. DA 6000, Revision H, dated 8 August 2024 and received by Council on 13 August 2024
- (h) Operational Waste Management Plan, dated 8 May 2024, prepared by Elephants Foot Consulting and received by Council on 10 May 2024
- (i) Noise Impact Assessment (Ref:240114) prepared by Pulse White Noise Acoustic Pty Ltd, dated 19 April 2024 and received by Council on 10 May 2024
- (j) Stormwater plans prepared by Erbas Pty Ltd , Nos D000 Rev B, D001 Rev B, D002 Rev C, D010 Rev C, D020 Rev D (all dated 19 August 2024); D011 Rev B, D021 Rev B, D030 Rev A (all dated 13 May 2024) and received by Council on 20 August 2024.

### **Proposed Modification:**

It is proposed to amend Condition 1 to reference the drawings and documentation submitted with this modification application, as follows (amendments identified in **bold**):

The development must be in accordance with:

- (a) Architectural Plans prepared by MHNDUNION of Project No: 22-029 including the following:

Plan Number and Revision	Plan description	Plan Date	Date received by Council
DA 2000, Rev I	Context Plan	16.10.2024	To be advised
DA 2001, Rev I	Basement Plan	16.10.2024	
DA 2002, Rev I	Ground Floor Plan	16.10.2024	
DA 2003, Rev I	Level 1 Floor Plan	16.10.2024	
DA 2004, Rev I	Level 2 Floor Plan	16.10.2024	
DA 2005, Rev I	Level 3 Floor Plan	16.10.2024	
DA 2006, Rev I	Roof Plan	16.10.2024	
DA 3000, Rev I	North Elevation	16.10.2024	
DA 3001, Rev I	South Elevation	16.10.2024	
DA 3002, Rev I	East Elevation	16.10.2024	
DA 3003, Rev I	West Elevation	16.10.2024	
DA 3100, Rev I	Section A	16.10.2024	
DA 3101, Rev I	Section B	16.10.2024	
DA 3102, Rev I	Section C Contentions	16.10.2024	
DA 3103, Rev I	Section D Contentions	16.10.2024	
DA 3104, Rev I	Section E Contentions	16.10.2024	
DA 3105, Rev I	Detailed Section 1	16.10.2024	
DA 3106, Rev I	Detailed Section 2	16.10.2024	

- (b) **Landscape Plan Nos. LS01 to LS010, inclusive, Issue F, dated 16 October 2024, prepared by Melissa Wilson Landscape Architects**
- (c) BASIX and NatHERs Certificate/s
- (d) Preliminary Site Investigation Report (Reference No. E26309.E01\_Rev0) prepared by EI Australia, dated 5 April 2024 and received by Council on 10 May 2024
- (e) Traffic Impact Assessment, dated 21 August 2023, prepared by Traffix and received by Council on 12 October 2023
- (f) **Traffic Impact Assessment – Section 4.55 Statement, dated 16 October 2024, prepared by Traffix**
- (g) Arboricultural Impact Assessment and Management Plan prepared by Botanica Pty Ltd dated June 2023, and received by Council on 12 October 2023
- (h) **Schedule of external finishes and colours, Drawing No. DA 6000, Revision I, dated 16 October 2024**
- (i) **Operational Waste Management Plan, dated 16 October 2024, prepared by Elephants Foot Consulting**
- (j) Noise Impact Assessment (Ref:240114) prepared by Pulse White Noise Acoustic Pty Ltd, dated 19 April 2024 and received by Council on 10 May 2024
- (k) **Civil Engineering Plans prepared by Xavier Knight, Drawing Nos. C000, C001, C100, C101, C200, C201, C300, C400, C401, C500, C600 Rev A (all dated 10 October 2024).**







### 3.3 Condition 63 – Car Parking

Condition 63 relates to the approved number of car parking spaces. The existing condition is as follows:

**Existing Condition:**

*A total of **19** car vehicle parking spaces are to be provided within the development, allocated in the following manner:*

- (a) 15 standard residential parking spaces*
- (b) 2 accessible residential parking spaces*
- (c) 2 residential visitor parking spaces*

*At least 10% of all the car parking spaces are to be allocated as accessible parking spaces and be shared amongst the residential, visitor and commercial spaces where applicable.*

*Accessible parking spaces are to be designed in accordance with Australian Standard AS2890.6 - 2009 Off Street Parking for People with Disabilities.*

*Car parking spaces are to be allocated with the rates specified in the DCP, with no more than 2 spaces allocated to any residential unit/dwelling with 3 or more bedrooms. All car spaces are to be appropriately signposted and parked.*

*Condition reason: To ensure the amount of car parking on site is reflective of the approval.*

**Proposed Modification:**

It is proposed to amend Condition 63 to refer to the number of car parking spaces shown in the modified architectural plans submitted with this application. In order to comply with Council's maximum car parking rates, as well as accommodate storage as required by the conditions of consent and the required service equipment, the total number of car spaces has been reduced to 14 spaces. Accordingly, the proposed condition is as follows (amendments identified in **bold**):

*A total of **14** car vehicle parking spaces are to be provided within the development, allocated in the following manner:*

- (a) **10** standard residential parking spaces*
- (b) 2 accessible residential parking spaces*
- (c) 2 residential visitor parking spaces*

*At least 10% of all the car parking spaces are to be allocated as accessible parking spaces and be shared amongst the residential, visitor and commercial spaces where applicable.*

*Accessible parking spaces are to be designed in accordance with Australian Standard AS2890.6 - 2009 Off Street Parking for People with Disabilities.*

*Car parking spaces are to be allocated with the rates specified in the DCP, with no more than 2 spaces allocated to any residential unit/dwelling with 3 or more bedrooms. All car spaces are to be appropriately signposted and parked.*

*Condition reason: To ensure the amount of car parking on site is reflective of the approval.*

### 3.4 Condition 64 – Bicycle Parking

Condition 64 relates to the approved number of bicycle parking spaces. The existing condition is as follows:

**Existing Condition:**

*A total of 12 bicycle parking spaces are to be provided within the development, allocated in the following manner:*

- (a) 11 residential bicycle spaces*
- (b) 1 visitor bicycle spaces*

*The bicycle spaces are to be designed in accordance with Australian Standard AS2890.3 - 2015 Parking Facilities - Bicycle Parking.*

*The bicycle spaces are to be provided by way of a secure lockable area, individual lockers or suitable bicycle racks and are to be located within the ground floor foyer or adjacent within any forecourt or within the basement car parking area. Signage and line-marking (way finding) is to be provided to guide visitors to the allocated bicycle parking spaces to ensure a safe path of travel to the bicycle spaces (separate to cars). Details of this are to be submitted to Council for the approval of the Executive Manager, Infrastructure Services, or delegate.*

*Condition reason: To ensure the amount of bicycle parking is reflective of the approval.*

**Proposed Modification:**

It is proposed to amend Condition 64 to refer to the number of bicycle parking spaces shown in the modified architectural plans submitted with this application, as follows (amendments identified in **bold**):

*A total of **9** bicycle parking spaces are to be provided within the development, allocated in the following manner:*

- (a) **8** residential bicycle spaces*
- (b) 1 visitor bicycle spaces*

*The bicycle spaces are to be designed in accordance with Australian Standard AS2890.3 - 2015 Parking Facilities - Bicycle Parking.*

*The bicycle spaces are to be provided by way of a secure lockable area, individual lockers or suitable bicycle racks and are to be located within the ground floor foyer or adjacent within any forecourt or within the basement car parking area. Signage and line-marking (way finding) is to be provided to guide visitors to the allocated bicycle parking spaces to ensure a safe path of travel to the bicycle spaces (separate to cars). Details of this are to be submitted to Council for the approval of the Executive Manager, Infrastructure Services, or delegate.*

*Condition reason: To ensure the amount of bicycle parking is reflective of the approval.*



### 3.5 Condition 67 – Floor Space Ratio

Condition 67 relates to the approved floor space ratio. The existing condition is as follows:

**Existing Condition:**

*The following applies to Floor Space Ratio:*

- (a) *The Gross Floor Area of the building shall be limited to 1,471.7m<sup>2</sup>.*

*Prior to any Occupation Certificate (including Interim) being issued, a Registered Surveyor must provide certification of the total and component Gross Floor Areas (by use) in the development, utilising the definition under the Waverley Local Environmental Plan 2012, applicable at the time of development consent, to the satisfaction of the Principal Certifier.*

*Condition reason: To ensure the constructed development complies with the approved floor space ratio.*

**Proposed Modification:**

It is proposed to amend Condition 67 to refer to the FSR of the modified architectural plans submitted with this application, as follows (amendments identified in **bold**):

*The following applies to Floor Space Ratio:*

- (b) *The Gross Floor Area of the building shall be limited to **1,640.5m<sup>2</sup>**.*

*Prior to any Occupation Certificate (including Interim) being issued, a Registered Surveyor must provide certification of the total and component Gross Floor Areas (by use) in the development, utilising the definition under the Waverley Local Environmental Plan 2012, applicable at the time of development consent, to the satisfaction of the Principal Certifier.*

*Condition reason: To ensure the constructed development complies with the approved floor space ratio.*

The modified FSR is fully justified in Section 6.0 of this report.

## 4.0 DESCRIPTION & RATIONALE OF MODIFICATIONS

The proposed modifications relate to refinements to the approved building design. The changes will retain the approved building envelope and will remain well-articulated at all facades. The key reasons for the modifications are outlined below:

### **Design Development and Interior Design Co-Ordination**

A number of the changes relate to design development of the architectural documentation as the project progresses towards construction. This includes amendments to the apartment mix to cater to the current market demand for apartment sizes and amenities, with the approved eleven units converted to eight units, all being three bedrooms. Other changes include refinements to the internal layouts to co-ordinate with the interior architectural design and improvements to the communal open space. These modifications will improve the amenity and liveability of the development for the future residents.

### **Traffic Advice and Parking Provision**

Minor adjustments are proposed to the basement level to suit traffic engineering advice in regard to access. In addition, due to the change in the apartment mix, changes to the car, bicycle and motorcycle parking provision are proposed and ensure compliance is maintained with Council's parking requirements. A Traffic Report has been prepared to support the proposed modification and is submitted separately.

### **Services and Ausgrid Advice**

Various amendments are proposed to accord with advice from the services engineer and enquiries with Ausgrid. This includes adjustments to the location and dimensions of plant space in the basement and at upper levels to comply with spatial requirements, updates to fire infrastructure including a fire tank, inclusion of a substation kiosk at ground level, updated OSD tank size, and alterations to the bin storage and service risers. A Services Statement and an updated Operational Waste Management Plan support this application and are submitted separately.

### **Structural Engineering Advice**

Minor amendments are provided in accordance with the advice received from the structural engineer. This includes slight increases in the thickness of shoring walls in the basement, and the addition of structural blades to the eastern elevation.

### **Compliance with Conditions of DA Consent**

A number of changes are provided to facilitate compliance with the conditions of DA consent. Such changes include updates to the basement layout to comply with the storage requirements as per Condition 14, the size of the planter boxes on the eastern elevation as per Condition 2(b), and the landscaping requirements in Condition 2(a) and (b).

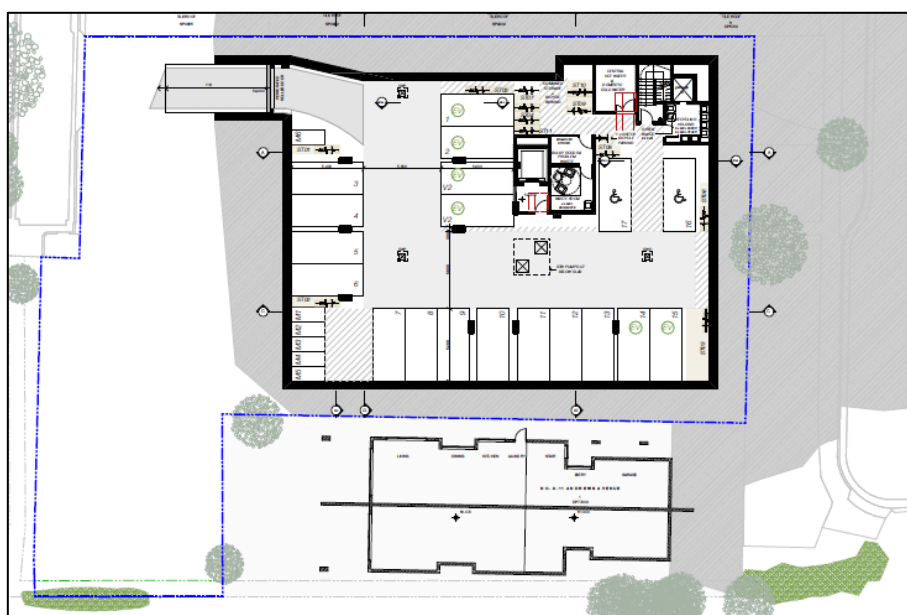
A floor by floor description is provided on the following pages. Further details of the proposed development are contained in the architectural drawings, separately submitted.



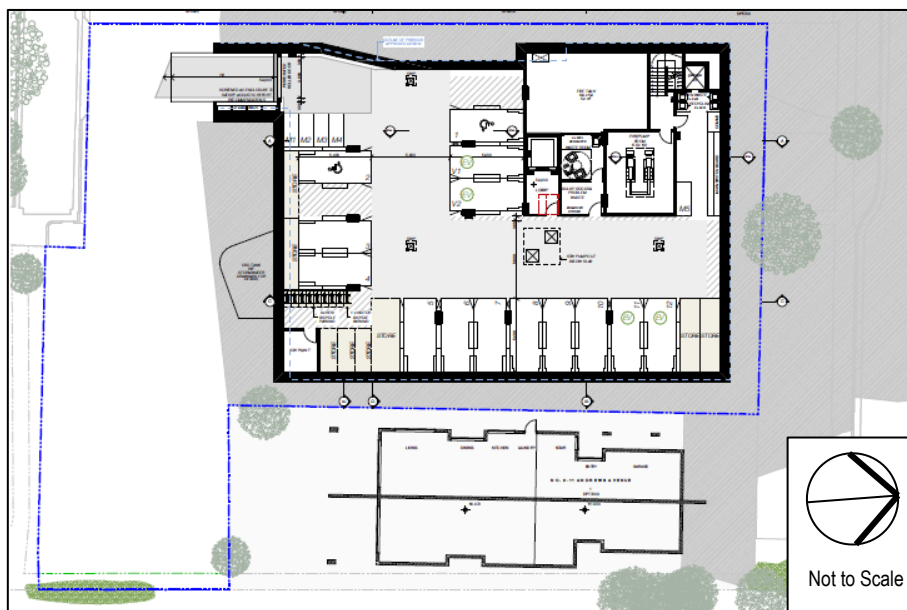
### Basement Floor Level

The Basement Floor Level is at RL 59.30 (as approved). The modifications at this level include:

- Adjustment to basement shoring to reflect traffic engineering advice regarding access
- Alterations to the car, bicycle and motorcycle parking provision to align with the modified apartment mix
- Adjustments to basement services to reflect services spatial advice and inclusion of a fire tank
- Minor change to the position of the southern wall to accommodate storage as required by DA conditions of consent
- Slight increase to shoring wall thickness in accordance with structural engineering advice (see Figure 3).



Approved (as conditioned)



Proposed

Source: MHNDU

**Figure 3: Approved and Proposed Basement Floor Plan**

### Ground Floor Level

The Ground Floor Level is at RL 65.70 and contains 2 x 3-bedroom units (as approved). The modifications at this level include:

- Relocation of entry gate between the building and walkway to the communal open space
- Minor unit layout change to facilitate amended bin store location
- Minor increases to internal footprint, all within the approved external building envelope
- Relocation of select services to basement, substation kiosk added and OSD size updated in accordance with services advice
- Structural blades added to eastern elevation
- Increase to the length of the communal pool at its western end
- Modifications to the layout to the communal facilities (see **Figure 4**).



Approved (as conditioned)



Proposed

Source: MHNDU

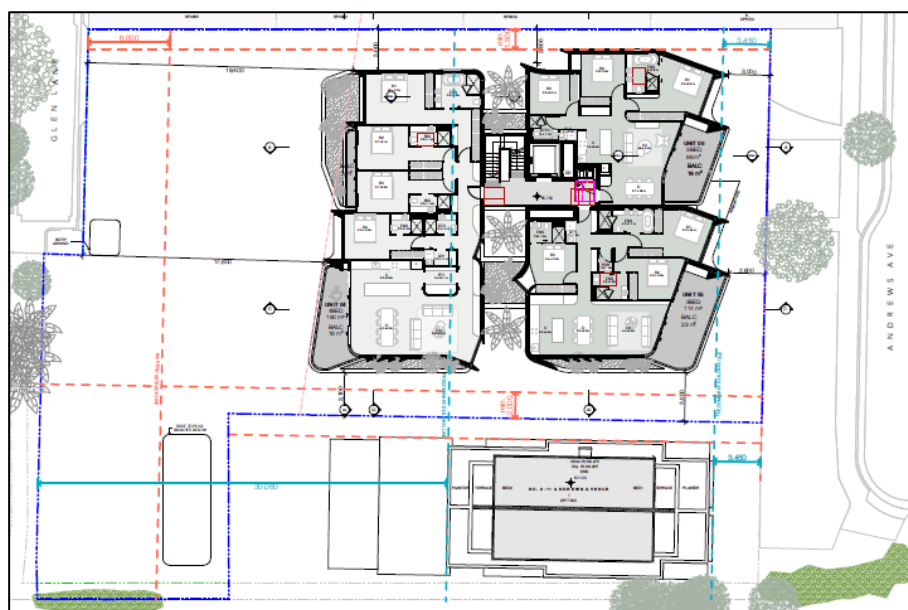
**Figure 4: Approved and Proposed Ground Floor Plan**



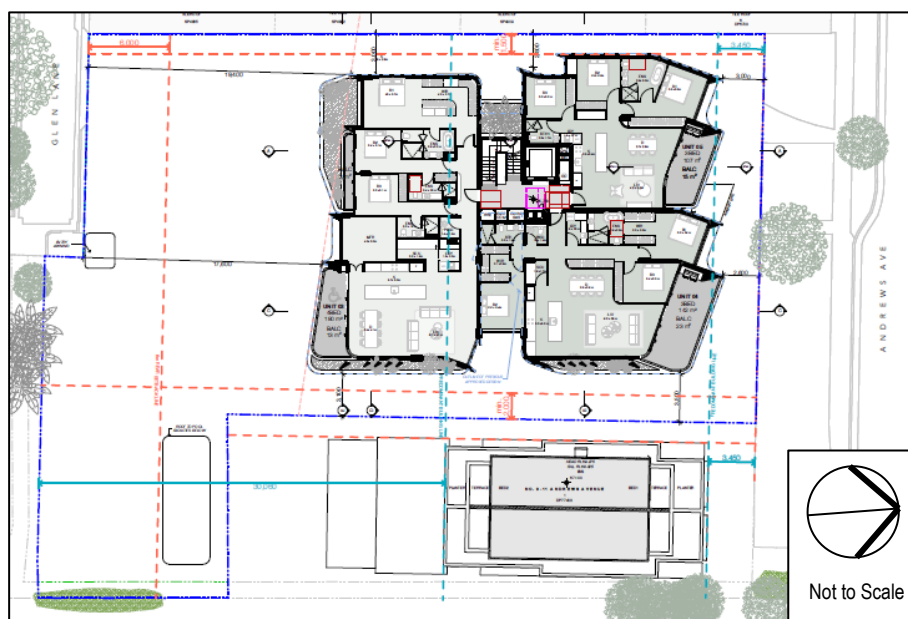
## Level 01

Level 01 is at RL 65.700 and contains 3 x 3-bedroom units. The modifications at this level include:

- Minor increases to internal footprint, all within the approved external building envelope
- General internal layout changes as coordinated with the interior architect
- Bin storage relocated and service risers coordinated as per services advice
- Western planter altered to align with ground floor adjustment
- Planter extent increased in accordance with the DA conditions of consent
- Structural blades added to the eastern planters in accordance with structural engineer's advice (see **Figure 5**).



Approved (as conditioned)



Proposed

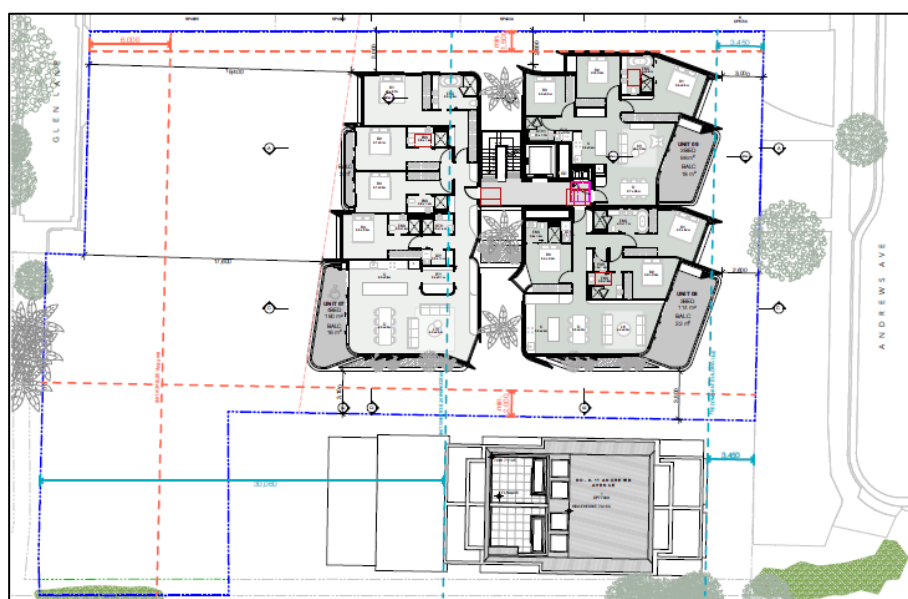
Source: MHNDU

**Figure 5: Approved and Proposed Level 01 Plan**

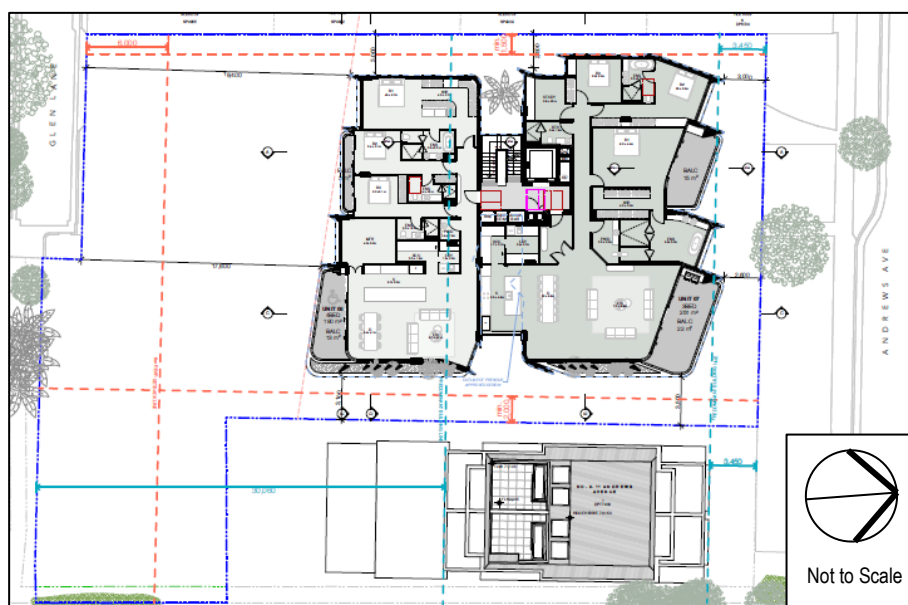
## Level 02

Level 02 is at RL 68.800 (as approved). The approved level contained 2 x 3-bedroom units and 1 x 4-bedroom unit, which this application changes to 2 x 3-bedroom units. The other modifications at this level include:

- Minor increases to internal footprint, all within the approved external building envelope
- General internal layout changes as coordinated with the interior architect
- Bin storage relocated and service risers coordinated as per services advice
- Western planter altered to align with ground floor adjustment
- Planter extent increased in accordance with the DA conditions of consent
- Structural blades added to the eastern planters in accordance with structural engineer's advice (see **Figure 6**).



Approved (as conditioned)



Proposed

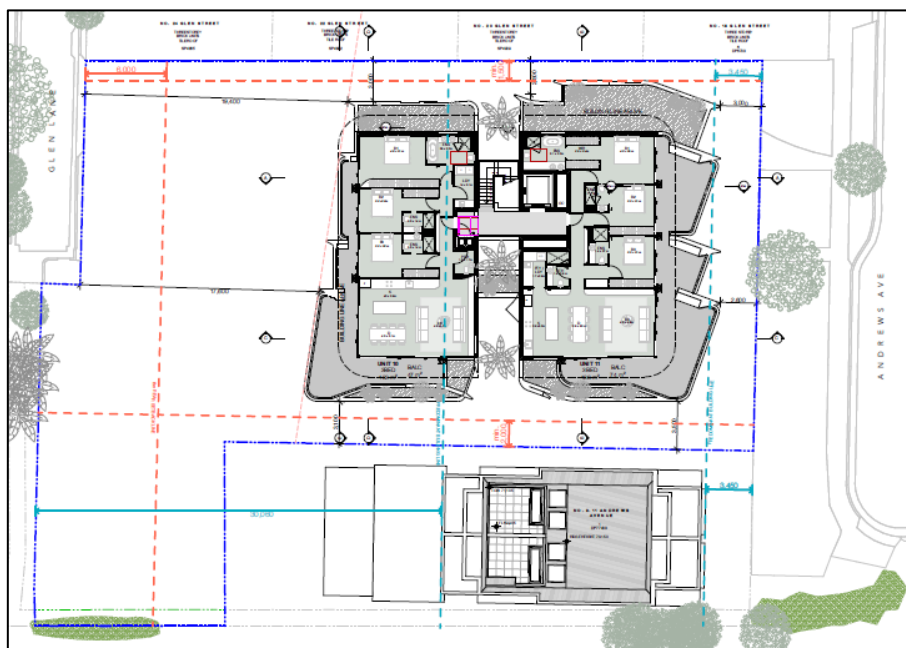
Source: MHNDU

**Figure 6: Approved and Proposed Level 02 Floor Plan**

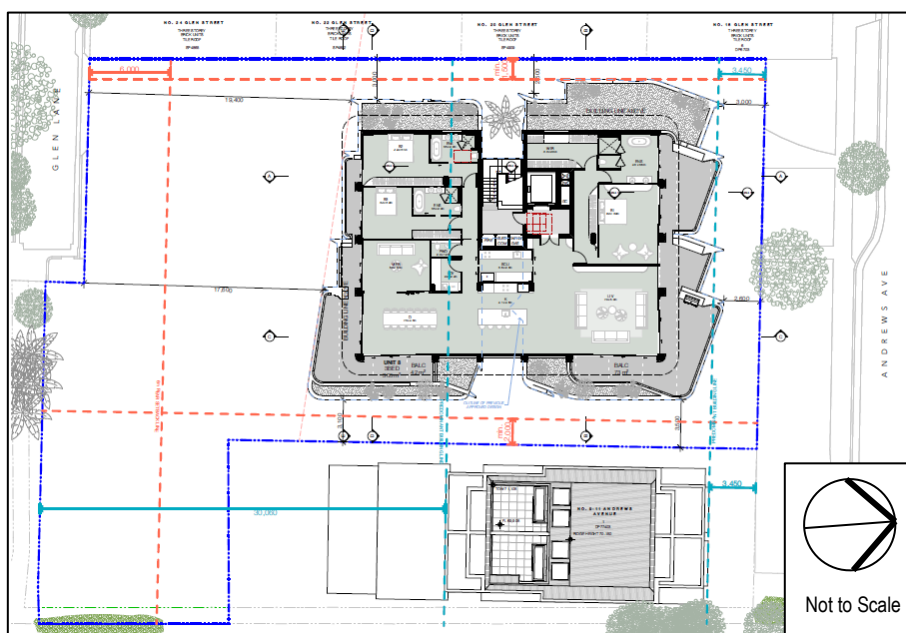
### Level 03

The Level 03 is at RL 71.900 (as approved). The approved level contained 2 x 3-bedroom units, which this application changes to 1 x 3-bedroom unit. The other modifications at this level include:

- Increase to internal footprint, within the approved external building envelope
- General internal layout changes as coordinated with the interior architect
- Bin storage relocated and service risers coordinated as per services advice
- Planter extent increased in accordance with the DA conditions of consent (see **Figure 7**).



Approved (as conditioned)



Proposed

Source: MHNDU

**Figure 7: Approved and Proposed Level 03 Floor Plan**



## Roof

The levels of the approved roof are maintained. The only modifications are for minor changes to the corners of the roof and the eastern side to suit the Level 03 plan adjustments below.



Approved (as conditioned)



Proposed  
Source: MHNDU

**Figure 8: Approved and Proposed Roof Plan**

## 5.0 SUBSTANTIALLY THE SAME ASSESSMENT

An application can be considered a modification under Section 4.55(8) if it is 'substantially the same' 'qualitatively', 'quantitatively' and 'essentially'. This is in accordance with relevant case law, including:

- *Moto Projects (No. 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280
- *Chidiac v Canterbury City Council* [2012] NSWLEC 1335
- *Hrsto v Ku-Ring-Gai Council* [2011] NSWLEC 1169
- *Realize Architecture Pty Ltd v Canterbury-Bankstown Council* [2023] NSWLEC 1437

## 5.1 Qualitative and Quantitative Assessment

In **quantitative terms**, the proposed modifications will retain the same number of storeys and levels. No changes are proposed to the building height and external setbacks. The landscaping, deep soil area and parking provisions remain compliant with Council's controls. Although the FSR is increased, the external envelope is consistent with the approval. A quantitative comparison is provided in **Table 1**.

TABLE 1: QUANTITATIVE COMPARISON OF APPROVED AND PROPOSED			
Measure	Approved	Proposal	Modification
Storeys	4 plus a basement	4 plus a basement	No change
Height	Max 13.6m	Max 13.6m	No change
FSR	0.9:1	1:1	+0.1:1
Car Parking	19 spaces	14 spaces	- 5
Front Setback	2.5-6.3m	2.5-6.3m	No change
Rear Setback	17.15-19.4m	17.15-19.4m	No change
Side Setbacks	1.5-4.95m	1.5-4.95m	No change
Landscaped Area	648m <sup>2</sup>	569m <sup>2</sup>	-79m <sup>2</sup>
Deep Soil Zone	430m <sup>2</sup>	379m <sup>2</sup>	-51m <sup>2</sup>
Units	11	8	- 3
Unit Types	3 bedroom and 4 bedroom	3 bedroom	No 4 bedroom units

In **qualitative terms**, the proposal will continue to provide a four level contemporary residential flat building designed by MHNDU. The streetscape elevation will be unchanged from the approval and therefore, will maintain its approved presentation to the public domain. The majority of the changes are located internally or at the rear of the property and will not be visible from the street or neighbouring properties. Similarly, minor adjustments to the internal footprints will remain within the approved building setbacks and thus will not discernibly change the appearance of the building from surrounding properties. The proposed modifications will not alter the building type and will continue to present as a well-articulated development articulated with modulated facades and the approved materials and finishes. Importantly, the modifications will preserve the approved levels of amenity for neighbouring properties.

In both **quantitative and qualitative terms**, the proposed modifications relate to modifications that will enhance the functionality and amenity of the approved development. The approved use is maintained as a residential flat building with a basement, swimming pools and landscaping. The development as modified is thus substantially the same as the development for which consent was originally granted.

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

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

- Changes to the facades and external appearance;
- Changes to the envelope and profile of the development;
- Increases in floor space;
- Increases in height (in metres);
- Increases in number of storeys;
- Additional basement levels; and
- Changes to the number and mix of dwellings.

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

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

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

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

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

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

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

The quantitative and qualitative aspects of the modifications have been outlined in Section 5.1 of this report. As indicated, the proposed modifications will continue to provide a residential flat building development across four storeys plus a basement. The development will provide three bedroom apartments with varied internal configurations, and a slightly less number of apartments in total. Three swimming pools and generous areas of landscaping will be retained within the open space areas surrounding the building. The proposed modifications will not be readily visible from surrounding properties or the public domain, because they are generally within the approved building envelope, in the basement or at the rear of the property. The modifications have been carefully designed to ensure they preserve approved levels of amenity for adjacent dwellings, in respect of privacy, solar access and views.



Accordingly, the proposal is considered to be qualitatively the same as the approved development and therefore satisfies the elements raised in *Moto Projects (No. 2) Pty Ltd*.

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

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

In *Hrsto v Ku-Ring-Gai Council*, the modifications proposed various changes including an increase in the number of units from 51 to 66, a reduction in the number of car parking spaces from 96 to 92, an increase in floor area from 5304m<sup>2</sup> to 5520m<sup>2</sup>, an increase in floor space ratio (FSR) from 1.25:1 to 1.3:1, a decrease in the building footprint from 2114m<sup>2</sup> to 1907m<sup>2</sup>, an increase in deep soil are and; a reduction in the basement volume by 500m<sup>3</sup> to 11,700m<sup>3</sup>. The proposed modifications listed were accepted as substantially the same development, inter alia:

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

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

The proposed modifications can be considered substantially the same in qualitative terms, as accepted by Brown C in *Hrsto*. The external envelope, building height, setbacks, materials and finishes are the same as the approval. There is no change to the building's streetscape elevation from Andrews Avenue. The modifications have been carefully designed to preserve the amenity of neighbouring properties, as approved. From this, we consider the proposed modifications to be consistent with the original approval.

**Realize Architecture Pty Ltd v Canterbury-Bankstown Council [2023] NSWLEC 1437**

In *Realize Architecture Pty Ltd v Canterbury-Bankstown Council*, the modifications proposed various changes including an increase in the number of units from 397 to 407 (11%) with modification of the proposed mix of units, an increase in floor area by 2,368m<sup>2</sup> (9.7%), an increase in floor space ratio (FSR) from 3.08:1 to 3.38:1, an additional two storeys to 2 out of the 4 buildings, complete reconfiguration and relocation of driveway to basement parking, reconfiguration of significant increase in community open space, reduction in building footprint, and removal of the ground floor visitor car park. The proposed modifications listed were accepted as substantially the same development, inter alia:

- 62 *I accept and adopt Mr Mead's qualitative conclusion, articulated in the Addendum SEE at page 21, at pars (a) to (d) that*  
*"the proposal as modified:*  
 (a) *Will not change the nature or the intensity of the use;*  
 (b) *Whilst improving the relationship to the public domain at ground level, this is similar with the intent established in the original approval;*  
 (c) *Will not change the relationship to surrounding developments as the modifications will maintain the character of the original approval;*  
 (d) *Where an increase in floor space and height is proposed on the upper levels, the development is consistent with the original approval as a whole, and the bulk and scale which establishes the streetscape character (from ground levels to levels 7/8) is unchanged per the original approval;"*
- 64 *For these reasons I find that the quantitative and qualitative changes identified above cause me to form the finely balanced positive opinion that the modified development is substantially the same development as the originally approved development.*

As detailed in the previous sections, this proposed application is considered to be substantially the same as the originally approved development, both qualitatively and quantitatively. The modified development will not change the nature of the use, will not increase the intensity of the use (rather this will decrease by virtue of the reduced number of units), will maintain a high degree of compatibility with the streetscape and public domain, will preserve the amenity of surrounding developments, and will maintain the bulk and scale of the approval as viewed from the street. On this basis, the proposal is substantially the same, in light of *Realize Architecture Pty Ltd v Canterbury-Bankstown Council*.

As the proposal is quantitatively, qualitatively and essentially substantially the same as approved development, the modifications can be considered under Section 4.55(8).

## 6.0 ENVIRONMENTAL PLANNING ASSESSMENT

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

### 6.1 Waverley Local Environmental Plan (LEP) 2012

The subject site is zoned R3 Medium Density Residential under the Waverley Local Environmental Plan (LEP) 2012. The proposal is permissible with consent under the LEP. The subject site is not identified as heritage item pursuant to the LEP and is not within a heritage conservation area.

#### **Building Height**

The proposed modifications will not alter or increase the approved maximum height of the building, which is 13.6m from existing ground level. The approved roof RLs of the building will be maintained. Accordingly, the approved building height will be maintained and therefore remains acceptable.

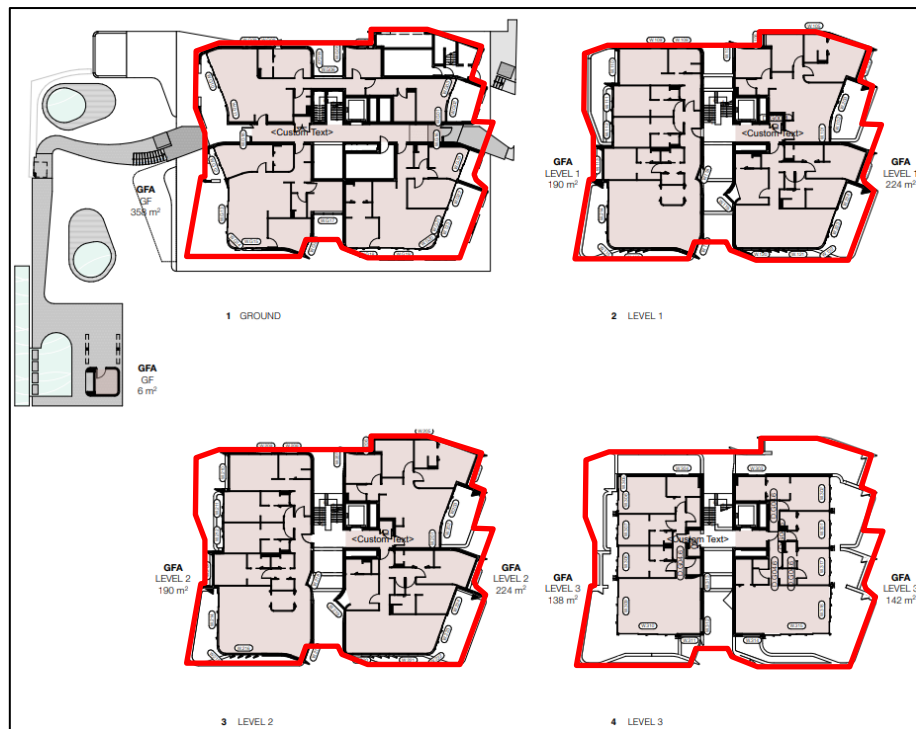
#### **Floor Space Ratio (FSR)**

Council's LEP prescribes a maximum FSR of 0.9:1 and Gross Floor Area (GFA) of 1,471.824m<sup>2</sup>. The approved development has a GFA of 1,471.7m<sup>2</sup> and FSR of 0.9:1. The modifications proposed in this application will increase the GFA to 1,640.5m<sup>2</sup> and FSR to 1:1. This varies from the development standard by 168.676m<sup>2</sup> or 11.46%.

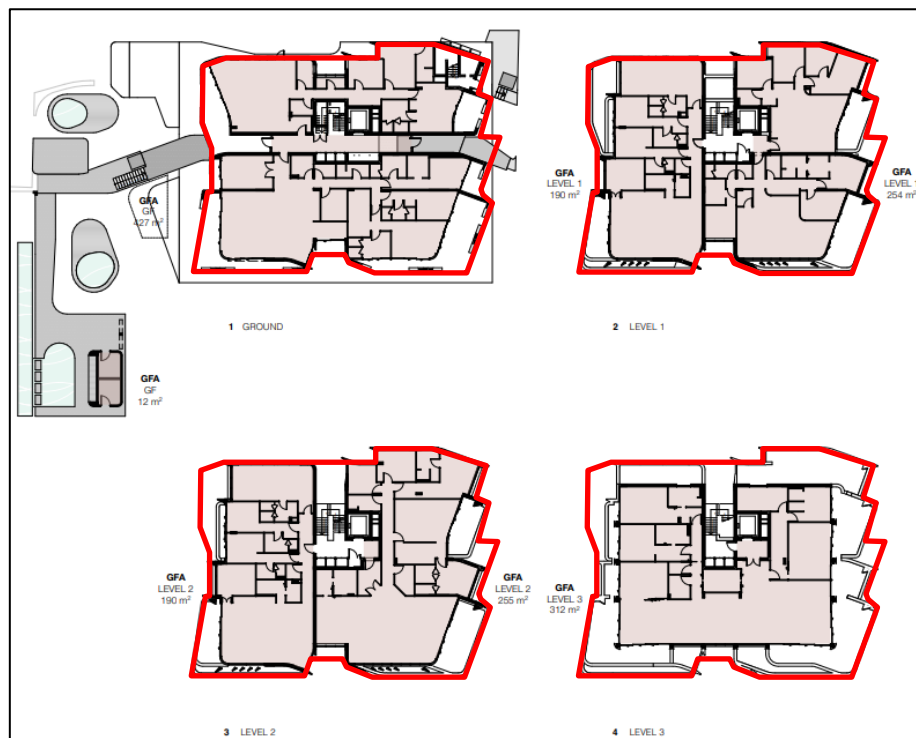
The additional GFA is located within the external envelope of the approved development (or at the rear of the property adjacent to the approved communal amenities). The GFA is largely attributed to adjustments to wall and glazing lines within the approved balconies and cut-outs. These do not extend any closer to the boundaries than what was approved in the DA. In other words, despite the numerical increase in GFA, the visual bulk and scale of the development is the same as the approval, because the approved setbacks, external envelope and height are maintained (see **Figure 9**).

By maintaining the approved envelope and setbacks, the proposal continues to achieve an acceptable degree of visual separation with neighbouring properties. Additionally, generous landscaping continues to be provided within all setback areas, which softens the apparent bulk and scale of the development. Importantly, the well-articulated, contemporary character of the building is maintained, with modulated facades and a varied palette of durable materials and finishes. This is consistent with the quality of the approval and achieves design excellence.





Approved (as conditioned)



Proposed

Approx. Outline of Approved Envelope  
GFA

Source: MHNDU

**Figure 9: Approved and Proposed GFA Calculation Diagrams**

One of the key considerations in supporting this proposal and indeed any other proposals that breach a control is to ensure consistency with the objectives of that control. In our opinion, the proposed modification maintains consistency with the relevant objectives of the FSR controls. An assessment against these objectives is provided as follows:

**Objective:** *To ensure sufficient floor space can be accommodated within the Bondi Junction Centre to meet foreseeable future needs,*

**Response:** N/A – Site is not within the Bondi Junction Centre.

**Objective:** *To provide an appropriate correlation between maximum building heights and density controls,*

**Response:** The proposed modifications to GFA will not alter the approved number of storeys or building height. The additional GFA will not be visible when viewed from the public domain or neighbouring site because it will be located within the approved building envelope, setbacks and height. Therefore, the development as modified will continue to provide an appropriate correlation between maximum building heights and density controls.

**Objective:** *To ensure that buildings are compatible with the bulk and scale of the desired future character of the locality,*

**Response:** The bulk and scale of the development will be remained, as approved, when viewed from surrounding areas. This is because the additional GFA is located within the approved building envelope or otherwise is not visible from the public domain. There will be no change to the north elevation of the building in the Andrews Avenue streetscape. All building facades will be well-articulated, and will have the same boundary setbacks as the approval.

Council and the Court has been satisfied that the building is compatible with the desired future character of the locality, in the Section 34 agreement and approval of DA-285/2023. The proposed modifications continue to result in a development that is sympathetic in appearance to the street and will respond to the evolving and desired medium density contemporary character of the area. Accordingly, the modified building will remain compatible with the bulk and scale of the desired future character of the locality.

**Objective:** *To establish limitations on the overall scale of development to preserve the environmental amenity of neighbouring properties and the locality.*

**Response:** Environmental amenity comprises a number of elements including privacy, solar access and views. The proposed modifications have been designed to preserve approved levels of environmental amenity for neighbouring properties and the locality. This has been achieved by carefully locating additional GFA within the approved building envelope, height and setbacks.

In respect of privacy, the proposal will retain all approved privacy measures. This includes generous boundary setbacks, privacy screening and fenestration. There will be no changes to the approved external setbacks, principal private open space areas or landscaping. It is noted that the reduced number of apartments and associated reduction in parking may generate positive effects in terms of aural and visual privacy, by lessening the intensity of the development. Overall, the retention of approved setbacks and privacy measures will preserve the approved levels of privacy, both for neighbouring residents and the future residents of the subject site.

Revised shadow diagrams and sun eye view diagrams for the modification have been prepared by CAD Draft P/L at between 9am and 3pm on 21 June (separately submitted). These diagrams demonstrate the approved levels of solar access will be preserved to the private open space and north-facing windows of neighbouring properties. Any additional shading is negligible and is a result of the amendments to the corners of the roof form. Those shadows do not occur to private open space areas or windows of neighbouring sites. Accordingly, solar access for neighbouring properties is preserved as per the approval and remains acceptable.

The proposal will not result in any additional view affectation compared to the approval. This is because the modifications maintain the approved external envelope, building setbacks and building height. Therefore, approved views are preserved.

Accordingly, the proposed development will preserve approved levels of amenity for surrounding properties.

In summary, the proposed modifications will result in an increase to the GFA and subsequent FSR above the development standard. However, additional GFA will either be within the approved building envelope and setback. The additional GFA will improve the internal amenity of the development, the development will remain compatible with the character's area and the proposal will preserve approved levels of environmental amenity for neighbouring properties and the streetscape. On this basis, the additional FSR is considered acceptable because the proposal upholds the objectives of the development standard.

## **6.2 Draft Waverley LEP 2012 Amendment - Dwelling Density in R3 and R4 Zones**

It is acknowledged that Council exhibited a Planning Proposal to amend the LEP by introducing Clause 6.18 regarding Residential Dwelling Density in the R3 and R4 Zones. Public exhibition concluded on 21 November 2024. The Planning Proposal indicates that a clause-specific savings provision will be introduced in clause 1.8A of the WLEP to clarify that the amendments introduced by the Planning Proposal will not apply to applications made but not finally determined before the commencement of the amendment. Therefore, the draft LEP Clause 6.18 is not applicable to this modification application.

Notwithstanding the above, it is noted that objective (a) of the draft LEP Clause 6.18 should not result in a reduction in the number of dwellings that existed on the site as of the date of gazettal of the Planning Proposal. This modification application amends the total number of dwellings provided within the development to 8, which remains greater than the existing number of dwellings on the site (5). As such, the proposal is considered to satisfy the objective of the draft LEP Clause.

## **6.3 State Environmental Planning Policy (SEPP) (Sustainable Buildings) 2022**

SEPP (Sustainable Buildings) 2022 was gazetted on 1 October 2023, and applies to the subject site. The Sustainable Buildings SEPP requires all new residences in NSW to meet sustainability targets for energy and water use relative to their climate zones. In considering the merits of the proposal, it is appropriate to refer to the sustainability targets of the SEPP. A BASIX Report prepared for the development (separately submitted) shows the modified residential flat building can continue to satisfy the relevant water and energy reducing targets and thermal performance.



## 6.4 State Environmental Planning Policy (SEPP) (Resilience and Hazards) 2021

SEPP (Resilience and Hazards) 2021 came into effect on 1 March 2022 and consolidated the previous Coastal Management, Remediation of Land and Hazardous and Offensive Development SEPPs as Chapters 2, 3 and 4 within the new SEPP. Clause 4.6(1) requires the consent authority to consider whether land is contaminated prior to the consent of development on that land. A Preliminary Site Investigation (PSI) was submitted with the approved development and concluded which concludes that the land is suitable for the development in accordance with the SEPP. The PSI was reviewed and found to be acceptable by Council's Environmental Health Officer. On this basis, further investigation is not considered necessary.

## 6.5 State Environmental Planning Policy (Housing) 2021

SEPP (Housing) 2021 was gazetted on 26 November 2021 and applies to the proposed development. The former SEPP No. 65 Design Quality of Residential Apartment Development was repealed on 14 December 2023 and Chapter 4 'Design of Residential Apartment Development' and Schedule 9 'Design Principles' were incorporated into the subject SEPP.

An amended Design Verification Statement and Apartment Design Guide (ADG) Assessment has been prepared by MHNDU has verified that a qualified designer designed, or directed the design of, the original development, and that the proposal is consistent with the nine Design Principles in Schedule 9 of the SEPP.

## 6.6 Waverley Development Control Plan (DCP) 2022

The DCP (amendment 4) came into effect on 29 July 2024 and applies to the development. The proposed modifications predominantly maintain approved levels of compliance with the applicable controls. Our assessment of the modified development against the key controls of the DCP is as follows (see **Table 2**).

TABLE 2: PROJECT COMPLIANCE – WAVERLEY DCP 2022			
Provision	Requirement	Proposal	Complies
Part B: General Provisions			
Car Parking	Minimise loss of on-street parking	No impact to on-street parking	YES
	Max rates for Parking Zone 2: 3+ bedroom – 1.5 spaces per dwelling Visitor – 1 space per 5 units = 12 resident + 2 visitor = Total 14 spaces	12 resident 2 visitor = Total 14 spaces	YES
Motorcycle Parking	1 space per 3 car spaces (incl. visitor) = 5 spaces	5 spaces	YES
Bicycle Parking	Min: Resident - 1 space per dwelling Visitor - 1 space per 10 dwellings = 8 resident + 1 visitor = Total 9 spaces	8 resident 1 visitor = Total 9 spaces	YES

Part C2: Other Residential Development			
Wall Height	Max 9.5m	>9.5m	AS APPROVED, NO CHANGE
Street Setbacks	Consistent with predominant building line at street frontage & upper levels	Predominantly complies with 3.45m setback line (matching No. 9-11 Andrews Ave), with minor exceptions relating to articulated balcony zone	AS APPROVED, NO CHANGE
Side & Rear Setbacks	Rear: Min 6m or no further than the predominant rear building line, whichever is greater, for each level	Min 17.15m	AS APPROVED, NO CHANGE
	Side: Min 1.5m	East: Min 3.1m West: Min 1.5m	YES AS APPROVED, NO CHANGE
	Deep soil: Min 2m wide zone along a side boundary	2m wide deep soil zone provided along eastern boundary	YES AS APPROVED, NO CHANGE
Building Design & Streetscape	Sensitive to streetscape character & views	Building is sensitive to streetscape character and views	YES
	Building design to respond to existing streetscape character	Building design responds to the streetscape character	YES
	External colour & finish sympathetic to streetscape & contribute to overall building appearance	External colours and finishes are high-quality and complement the streetscape and building appearance	YES
Landscaping	30% of site area is landscaped area = Min 491m <sup>2</sup>	569m <sup>2</sup> (34.8% of site area)	YES
	50% landscaped area is deep soil = Min 246m <sup>2</sup>	379m <sup>2</sup> (67% of landscaped area)	YES
Communal Space	15% site area to be consolidated communal open space = 245m <sup>2</sup>	251m <sup>2</sup> (15%)	YES AS APPROVED, NO CHANGE
Vehicular Access & Parking	Car parking siting integrated into design ensuring building façade is the dominant streetscape element	Car parking integrated into the basement and accessed from the laneway, which ensures the building façade is dominant streetscape element	YES
	Max one 2-way vehicular access point	One vehicular access point	YES
Solar Access & Overshadowing	Min 3hrs' sunlight to north-facing windows of habitable rooms & all POS of adjacent dwellings betw. 9am – 3pm	Modifications are within the approved external envelope and thus maintains the approved degree of solar access to north-facing windows and POS of adjacent dwellings	AS APPROVED, NO CHANGE
Views & View Sharing	Minimise view loss to adjoining & adjacent property while still providing view opportunities from development	Modifications are within the approved external envelope and thus maintains the approved views and view sharing	YES
Visual Privacy & Security	Above ground open spaces not to directly overlook rooms & private landscaped areas of adjoining properties unless screening can mitigate overlooking	Approved privacy treatments are retained to prevent direct overlooking	YES

Accordingly, the proposal retains approved levels of compliance with the DCP or otherwise remains consistent with the relevant requirements.

## 6.7 Appearance of the Building and Landscape Considerations

The proposed modifications to the approved four storey residential flat building development will not readily alter the appearance of the building. This is because the changes are within the approved building envelope, internal, within the basement or located at the rear of the property. Importantly, there will be no change to the primary streetscape elevation of the building, when viewed from Andrews Avenue.

The sides and rear of the building will remain well articulated. The built form will feature planters, fins, screens, angled walls and curved balconies consistent with the detailing of the approved building. Additionally, the approved building setbacks and height will be retained. As such, the bulk, scale and appearance of the building when viewed from the adjacent properties will be consistent with the approval and will maintain an appropriate visual interface with the surrounds.

The proposal will continue to provide significant areas of landscaping and planting in the open space areas surrounding the building, as well as in planter beds at the upper levels. The development will remain compliant with the landscaping and deep soil zone controls of the DCP and will continue to contribute positively to the scenic qualities of the locality.

Overall, the modified proposal by MHNDU will continue to present a high-quality contemporary residential flat building development. The degree of articulation at all facades will be maintained and the development will largely maintain its approved external appearance when viewed from the adjacent public and private domains. Accordingly, the modified development will continue to achieve compatibility with the existing and desired future character of the neighbourhood, consistent with the approval.



Proposed North Elevation (Unchanged from Approval)



Photomontage of the Approved Development

Source: MHNDU

**Figure 10: The Development as Viewed from Andrews Avenue**



## 6.8 Relationship to Surrounding Development

The proposed modifications have been designed to preserve visual and acoustic privacy, solar access and views from neighbouring developments. This has been achieved by retaining the external envelope of the approved residential flat building.

### Privacy

The proposal will retain all approved privacy measures. This includes generous boundary setbacks, privacy screening and fenestration. There will be no changes to the approved external setbacks, principal private open space areas or landscaping. It is noted that the reduced number of apartments and associated reduction in parking may generate positive effects in terms of aural and visual privacy, by lessening the intensity of the development. Overall, the retention of approved setbacks and privacy measures will preserve the approved levels of privacy, both for neighbouring residents and the future residents of the subject site.

### Solar Access

Revised shadow diagrams and sun eye view diagrams for the modification have been prepared by CAD Draft P/L at between 9am and 3pm on 21 June (separately submitted). These diagrams demonstrate the approved levels of solar access will be preserved to the private open space and north-facing windows of neighbouring properties. Any additional shading is negligible and is a result of the amendments to the corners of the roof form. Those shadows do not occur to private open space areas or windows of neighbouring sites. Accordingly, solar access for neighbouring properties is preserved as per the approval and remains acceptable.

### Views

The proposal will not result in any additional view affectation compared to the approval. This is because the modifications maintain the approved external envelope, building setbacks and building height. Therefore, approved views are preserved.

Accordingly, the proposed development will preserve approved levels of amenity for surrounding properties.

## 6.9 The Suitability of the Site

The proposed modifications will improve the overall function and amenity of the development, when compared to the approved. The majority of the changes are located internally and are within the approved external building envelope, which demonstrates the site remains suitable for the development. The remainder of the changes are to suit technical advice received from the consulting engineers as the documentation progresses to the next stage of development, which will improve the overall suitability and structural integrity of the building.

The approved use as a four storey residential flat building development will be maintained. The modifications will not increase traffic generation or the likelihood of hazards such as landslip, bushfire or flooding. The proposal maintains a compliant number of car parking spaces which is anticipated to satisfy the parking demand.

## 6.10 The Public Interest

The proposal will continue to have social and economic benefits in the area with the construction of a well-designed residential flat building development. This will contribute to meeting the demand for medium density residential accommodation in the LGA. The modified unit mix will also cater to the current market demand for family-sized apartments. The additional facilities within the apartments and communal spaces will improve the amenity of the dwellings for future residents.

As the proposed modifications are generally located internally and external modifications are at the rear, the development will maintain its approved appearance when viewed from Andrews Avenue. By maintaining the approved envelope, the proposal preserves solar access, views and privacy for surrounding properties.

The proposal will provide employment in the provision of maintenance services once the building is occupied. Accordingly, in our opinion, the proposal will not impact on the area's character, preserves amenity, and is in keeping with the public interest.

## 7.0 CONCLUSION

This Section 4.55(8) Modification application requests amendments to DA-285/2023 for the approved four storey residential flat building and associated works at No. 1-7 Andrews Avenue and 26 Glen Street, Bondi. In summary, the proposal seeks amendments to Condition 1 to refer to the updated plans and documentation submitted with this application; deletion of Conditions 2(a) and (b) because they have been accepted and satisfied by the revised landscape plans; modification of Conditions 63 and 64 to reflect the modified number of car and bicycle parking spaces; and Condition 67 to reflect the modified FSR. Importantly, the modified proposal retains the external envelope of the approved building, and this ensures the development continues to be compatible with the existing and desired future character of the locality and preserves approved levels of amenity for neighbours.

This letter demonstrates the proposal is substantially the same as the approval. The proposed modifications have been considered both qualitatively and quantitatively, with reference to three Land and Environment Court cases relating to modifications to consent. We noted modification applications with a greater degree of change and impact have been approved by other NSW Councils and the Land and Environment Court. The Court can be satisfied that the proposed modifications to development consent DA-285/2023 can be assessed as a Section 4.55(8) modification to consent.

It is considered that the above-mentioned modification to the approved development makes minor changes with regards to the external appearance of the approved built form. The modifications will not be discernible from the approval, when viewed from the surrounding private and public domain. This is because the changes are within the approved building envelope, within the basement or at the rear of the property. The approved streetscape elevation, bulk and scale to Andrews Avenue will be retained and the building will continue to be well-articulated at all facades. Generous landscaped areas will be provided within all building setbacks, as per the approval. The proposed modifications will enhance amenity for residents, improve the functionality of the development and will comply with the technical advice from the consulting engineers. In our assessment, the modifications are consistent with the character of the approved development and the surrounding area, and will preserve approved levels of solar access, privacy and views for neighbours.

This application is supported by amended architectural plans, design verification statement and ADG assessment by MHNDU; updated shadow diagrams by CAD draft; updated civil drawings by Xavier Knight; revised landscape plans by Melissa Wilson Landscape Architecture; updated BASIX and NatHERS certificates; Traffic Statement by Traffix; updated Adaptable Housing Assessment by J Squared Consulting; updated Operational Waste Management Plan by Elephants Foot Consulting; and Services Statement by Neuron. These plans and documents have informed our assessment and confirm the modified development remains suitable for the site and the locality.

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

Yours faithfully,



George Karavanas  
**MANAGING DIRECTOR**