



SECTION 4.55(2)

STATEMENT OF ENVIRONMENTAL EFFECTS

Section 4.55(2) application to modify residential flat building approved under DA2021/2458

1 Peel Street and 1-3 Taree Street,
Tuncurry

Prepared for: Jaycorp Group

REF: M240248

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1. Introduction

We act on behalf of the Applicant to modify the approved residential flat building at No. 1 Peel Street and 1-3 Taree Street, Tuncurry.

On 31 December 2021, a Development Application (DA2021/2458) was lodged with MidCoast Council seeking consent for the *'demolition of existing dwellings and outbuilding and construction of a 5 storey residential flat building comprising of 30 units'*. The approval granted consent for 30 residential apartments, at-grade and basement car parking. The application was approved on 10 May 2023.

Pursuant to Section 4.55(2), this application seeks to modify a number of elements as approved under DA2021/2458. Of most relevance, this application includes the addition of a second storey to Units 27 and 28 located on Level 4. The proposal also includes numerous minor modifications across the basement and all levels of the development as a result of further design and construction amendments. These changes will improve efficiency in design and constructability, ensuring compliance with the relevant Australian Standards and requirements of specialist consultants.

The modified development will continue to comply with the relevant provisions of Great Lakes Local Environmental Plan 2014 and Great Lakes Development Control Plan. The proposal maintains an exceedance to the maximum height development control and Floor Space Ratio (FSR), as previously considered and approved with DA2021/2458. The modified proposal will remain consistent with the Apartment Design Guide (ADG) and will remain a suitable form of development within the site context as approved.

Changes proposed as part of this Section 4.55(2) application have been detailed on the architectural plans prepared by *Designcorp Architects*. The intent of this application is to improve the layout, functionality and constructability of the development. The proposed modifications will have no impact to the intensity of land use, aesthetic quality and environmental impacts when compared to the approved development. That is, the proposed changes are predominantly located within the approved building envelope (excluding the second storey addition to Units 27 and 28), and will have no perceivable impact to the public domain or amenity of surrounding properties. As demonstrated in the submitted architectural plans, the proposal will include a number of modifications which will result in an overall improvement to the functionality of the residential flat building.

The proposed modification is supported by a series of plans and documentation including a BASIX Certificate and Access report.

The purpose of this Statement is to address the planning considerations associated with the modified proposal and specifically to assess the likely impact of the development on the environment in accordance with the requirements of Sections 4.55 and 4.15 of the Environmental Planning and Assessment Act (EP&A Act).



2. Site Description

The site address is 1 Peel Street and 1-3 Taree Street, Tuncurry, and is legally identified as Lot 1 DP 326289, Lot 1 DP 119693 and Lot 1 DP 652227. An aerial image of the site is provided in **Figure 1**, with the site outlined in yellow.



Figure 1 Location Plan of subject site and surrounding area

The site is a regular shaped allotment with an overall site area of 2,193.4m². The site has a northern boundary length adjoining No. 3-7 Peel Street of 50m, an eastern and western boundary length to Peel Street and Peel Lane of 43m, and a southern boundary length of 50m to Taree Street.

The subject site has a minor fall of approximately 1.27m from the south-east corner, with an RL of 3.48, to the north-western corner, with an RL of 2.21.

Currently occupying the site are three x single storey dwelling houses. There are six (6) trees on the site which will all be located within the buildable area and are proposed (and approved) for removal. The loss of these canopy trees will be compensated by the replacement planting detailed in the originally approved Landscape Plan. There are two heritage-listed street trees (Canary Island date palms) located to the south of the site adjoining the Taree Street footpath which will be retained.

The site is located within a predominantly residential area with surrounding developments comprising a mixture of residential flat buildings, multi-dwelling housing and detached single and double storey dwellings.

Adjoining the site to the north, at No. 3-7 Peel Street, is a four storey residential flat building constructed over ground level garages. To the south of the site, across Taree Street, are several 4 storey residential flat buildings located at No. 6 and 10 Taree Street. Opposite Peel Lane, to the east of the site, is a double storey dual occupancy at No. 1A



Taree Street, and to its north is an 8 storey residential flat building at No. 6-19 Manning Street. To the west of the site, is the Great Lakes campus of the North Coast Institute of TAFE, which is located in a landscaped setting with large canopy trees along the site perimeter.



3. Background

On 14 December 2017, MidCoast Council granted development consent for the ‘*demolition of existing buildings and construction of a residential flat building*’, approved under DA-538/2017. The approved development included the construction of 30 residential apartments, at-grade and basement car parking.

On 31 December 2021, a Development Application (DA2021/2458) was lodged with MidCoast Council seeking consent for the ‘*demolition of existing dwellings and outbuilding and construction of a 6 storey residential flat building*’. During the assessment process, the proposal was reduced to a 5 storey building comprising of at-grade and basement parking, and 30 residential units. The application was approved on 10 May 2023.



Figure 2 Approved southern elevation as per DA2021/2458

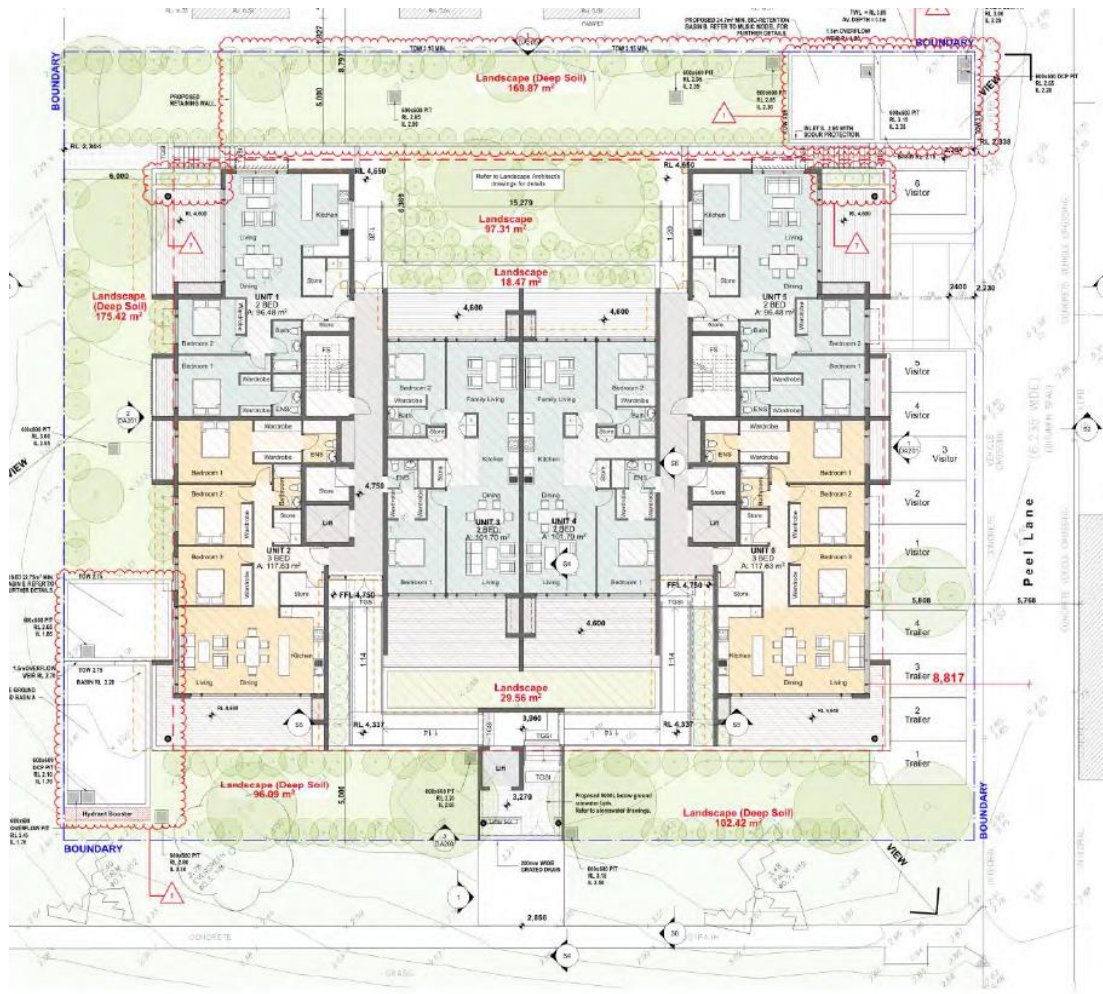


Figure 3 Approved Ground Floor and Site Plan as per DA2021/2458

As detailed, this application seeks to modify DA2021/2458 as per Section 4 below.



4. Details of Proposed Modification

Pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), this application seeks to modify the approved development by adding a second storey to Units 27 and 28 located on Level 4. This addition will result in a six storey residential flat building. The proposal will maintain 30 residential units, 39 car parking spaces, 6 visitor spaces and 4 trailer spaces.

The proposal also includes numerous modifications across the basement level and all levels above as a result of further design and construction amendments. These changes will improve efficiency in design and constructability, ensuring compliance with the relevant Australian Standards and requirements of specialist consultants.

Specifically, the second storey addition to Units 27 and 28 will include a storage area, two (2) bedrooms, two (2) ensuites and balcony to the southern elevation.

The proposal includes changes to the approved Gross Floor Area (GFA) calculations, increasing the total FSR of the site to 0.74:1 due to the proposed modifications.

There are no changes proposed to the approved building footprint, however, in order to facilitate the proposed amendments, a reduction in the number of bicycle parking is proposed.

The modifications proposed are detailed in the architectural plans prepared by *Desingcorp Architects*, and are described below:

Basement Level

- Fire hydrant pump room and fire stair updated
- Lift door rotated to ensure accessible clearance
- Main switch room updated to a bigger size
- Addition of NBN room
- Addition of rainwater tank
- Addition of new columns resulting in service room being removed and parking layout updated
- Reduction of bicycle spaces from 30 to 16

Ground Floor

- Fire hydrant pump room and fire stair updated
- Lift door rotated to ensure accessible clearance
- Addition of fire and smoke doors
- Facade upgrades to ensure consistency
- Redesign of walk-way levels
- Removal of balcony to Units 5 and 6 to maintain head height for parking below
- Bathrooms to Unit 2 and 6 amended to ensure adaptability

Levels 1-3

- Lift door rotated to ensure accessible clearance
- Consistency of facade across all levels
- Bathrooms to Unit 8, 11 and 14 amended to ensure adaptability
- Reduction of window width to eastern and western facade

Level 4

- Lift door rotated to ensure accessible clearance



- Consistency of facade details
- Bathroom amended to Unit 26 and 30 for adaptability
- Reduction of window width to eastern and western façade
- Redesign of Unit 27 and 28 to accommodate two (2) bedrooms, ensuite, rumpus, living, dining kitchen, bathroom, staircase access

Level 5

- Second storey addition to Units 27 and 28 accommodating two (2) bedrooms and two (2) ensuites

Roof

- Extension of roof between lift and fire stair shafts
- Communal open space

The proposal will maintain a breach to the maximum height limit and Floor Space Ratio (FSR), as previously considered and approved. This is discussed further in Section 5.3.3.

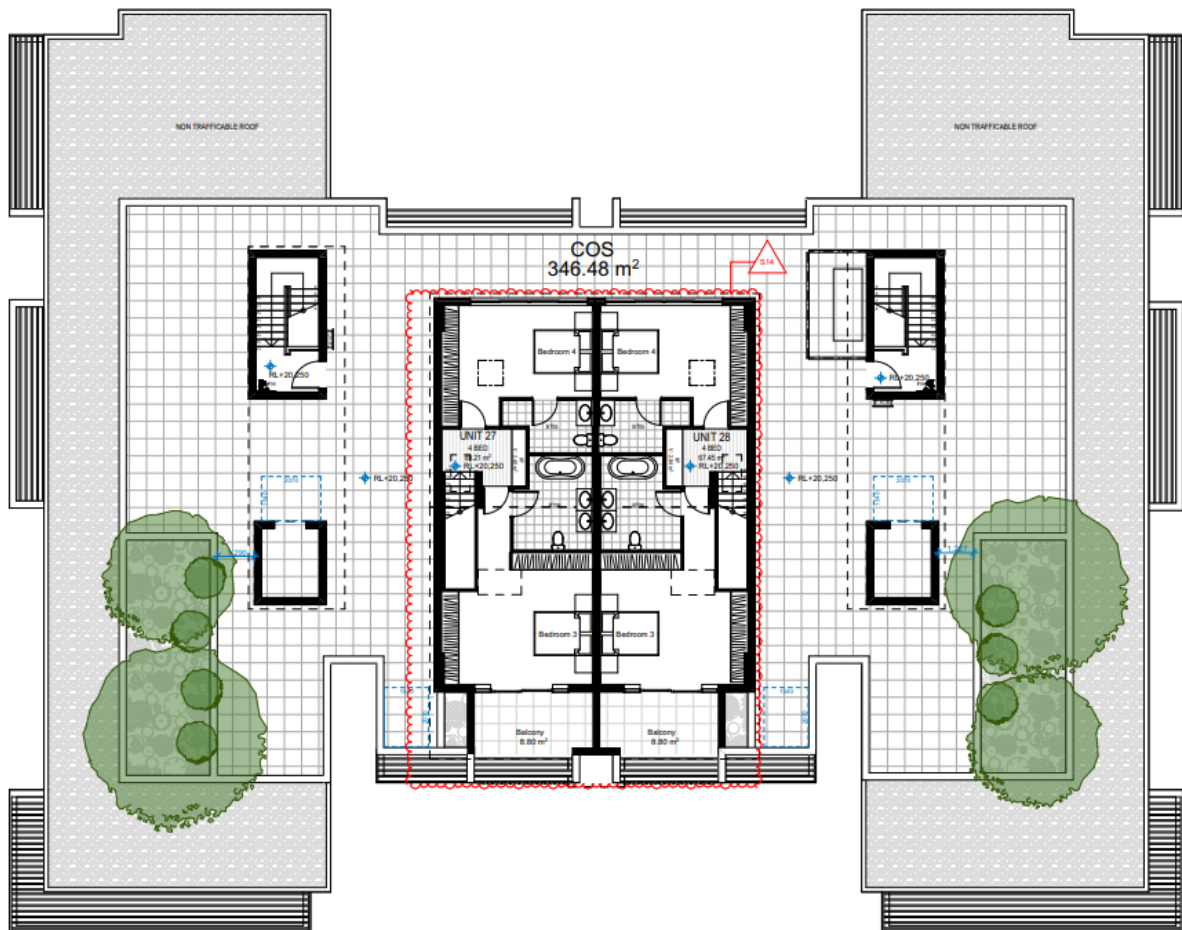


Figure 2 Proposed Level 5 showing floor plan of second storey addition and communal open space



Figure 3 Photomontage showing proposed modifications and second storey addition to Units 27 and 28 looking north from Taree Street

Project data for the subject site is provided at **Table 1** with a comparison made to the approved development.

Table 1 Project Data			
Site Area	2,193.4m ²		
	Control	Approved	Proposed
Number of Apartments	N/A	30	30
Gross Floor Area	2,412.74m ²	3,640.79m ²	3,816.66m ²
FSR (Clause 4.4(2B))	1.1:1	1.66:1	1.74:1
Height (Clause 4.2(2A))	18.9m	20.74m	21.63m (2.73m variation)
Parking	As per Part 10.3.1.2 of DCP	39 basement spaces 6 visitor spaces 4 trailer spaces	39 basement spaces 6 visitor spaces 4 trailer spaces
Communal Open space	25% (548.35m ²)	44.4% (973m ²)	36% (797.25m ²)
Deep Soil (minimum 3m)	7% (153.5m ²)	25% (543m ²)	22.5% (494.76m ²)





In addition to the above, the following conditions of consent are required to be amended to ensure compliance with the amended architectural plans, shown in **bold** and *italics*:

Condition 1 of DA2021/2458 is required to be amended to read as follows:

General Conditions

1. Development in accordance with approved plans

The development must be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

Plan type/Supporting Document	Plan No. & version	Prepared by	Dated
<i>Site Plan</i>	<i>Drawing No. DA001, Issue: E</i>	<i>Designcorp Architects</i>	<i>21/08/2024</i>
Demolition Plan	Drawing No. DA002, Revision A	BKA Architecture	15/12/21
<i>Roof Plan</i>	<i>Drawing No. DA100, Issue: E</i>	<i>Designcorp Architects</i>	<i>21/08/2024</i>
<i>Basement Floor Plan</i>	<i>Drawing No. DA101, Issue: E</i>	<i>Designcorp Architects</i>	<i>21/08/2024</i>
<i>Ground Floor Plan</i>	<i>Drawing No. DA102, Issue: E</i>	<i>Designcorp Architects</i>	<i>21/08/2024</i>
<i>Typical Floor Plan</i>	<i>Drawing No. DA103, Issue: E</i>	<i>Designcorp Architects</i>	<i>21/08/2024</i>
<i>Level Four Floor Plan</i>	<i>Drawing No. DA104, Issue: E</i>	<i>Designcorp Architects</i>	<i>21/08/2024</i>
<i>Level Five Floor Plan</i>	<i>Drawing No. DA104, Issue: E</i>	<i>Designcorp Architects</i>	<i>21/08/2024</i>
<i>North and South Elevations</i>	<i>Drawing No. DA200, Issue: E</i>	<i>Designcorp Architects</i>	<i>21/08/2024</i>
<i>East and West Elevations</i>	<i>Drawing No. DA201, Issue: E</i>	<i>Designcorp Architects</i>	<i>21/08/2024</i>
<i>Section - North to South - AA</i>	<i>Drawing No. DA300, Issue: E</i>	<i>Designcorp Architects</i>	<i>21/08/2024</i>
<i>Section – East West - BB</i>	<i>Drawing No. DA301, Issue: E</i>	<i>Designcorp Architects</i>	<i>21/08/2024</i>
Section - Ramp	Drawing No. DA302, Revision D	BKA Architecture	3/2/23
<i>Sections - Entry</i>	<i>Drawing No. DA303, Issue: E</i>	<i>Designcorp Architects</i>	<i>21/08/2024</i>
Materials and Finishes	Drawing No. DA708, Revision C	BKA Architecture	9/9/22
<i>Adaptable Unit Details</i>	<i>Drawing No. DA950, Issue: E</i>	<i>Designcorp Architects</i>	<i>21/08/2024</i>





<i>Adaptable Unit Details</i>	<i>Drawing No. DA951, Issue: E</i>	<i>Designcorp Architects</i>	<i>21/08/2024</i>
Hardscape Plan	DWG No. LPDA 23 – 056/1, Rev B	Concept Architects Landscape	08.09.22
Landscape Plan - GF	DWG No. LPDA 23 – 056/2, Rev B	Concept Architects Landscape	08.09.22
Landscape Plan – Typical Floor	DWG No. LPDA 23 – 056/3, Rev B	Concept Architects Landscape	08.09.22
Landscape Plan	DWG No. LPDA 23 – 056/4, Rev B	Concept Architects Landscape	08.09.22
Planting Palettes	DWG No. LPDA 23 – 056/5, Rev B	Concept Architects Landscape	08.09.22
Details 1	DWG No. LPDA 23 – 056/6, Rev B	Concept Architects Landscape	08.09.22
Details 2	DWG No. LPDA 23 – 056/7, Rev B	Concept Architects Landscape	08.09.22
Specifications	DWG No. LPDA 23 – 056/8, Rev B	Concept Architects Landscape	08.09.22
STORMWATER DRAINAGE PLAN BASEMENT LEVEL	Dwg No. D10, Rev D	Amity Engineers -	31/01/2023
STORMWATER DRAINAGE PLAN GROUND LEVEL	Dwg No. D11, Rev D	Amity Engineers -	31/01/2023
STORMWATER DRAINAGE DETAILS SHEET 1	Dwg No. D20, Rev D	Amity Engineers -	31/01/2023
STORMWATER DRAINAGE DETAILS SHEET 2	Dwg No. D21, Rev D	Amity Engineers -	31/01/2023
STORMWATER DRAINAGE DETAILS SHEET 3	Dwg No. D22, Rev D	Amity Engineers -	31/01/2023

The approved plans and supporting documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

Reason: Information and to ensure compliance.





Condition 60 of DA2021/2458 is required to be amended to read as follows:

60. Bicycle Parking

*Prior to the issue of an occupation certificate, the development must be provided with a Class 2 bicycle enclosure suitable for at least **16** bicycles. The bicycle spaces must be designed and constructed in accordance with Australian Standard AS/NZS 2890.3: Parking facilities - Bicycle parking facilities.*

Reason: *To ensure suitable bicycle parking is provided within the development.*



5. Statutory and Policy Compliance

5.1 SECTION 4.55

Section 4.55 of the *Environmental Planning & Assessment Act 1979* contains provisions relating to the modification of development consent. Specifically, subclause (2) refers to other modifications, and states:

(2) Other modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

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

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

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

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

Subsections (1) and (1A) do not apply to such a modification.

The proposal is the subject of a Section 4.55(2) as it entails modifications to the design and external appearance and key development data (Height and FSR) of the approved development. The proposed modifications maintain the use of the approved residential flat building and will not result in an increase in intensity beyond that of the approved scheme. The proposal includes an increase in FSR in order to accommodate amendments to the floor plans and the second storey component to Units 27 and 28. Importantly, the proposal will maintain the design, character and general form of the building, along with its relationship to the streetscape and neighbouring properties, remaining substantially the same as the originally approved development under DA2021/2458. For this reason, the proposed modifications do not require submission of a new development application given that the proposal does not seek to alter the use and nature of the approved building.

5.2 SUBSTANTIALLY THE SAME DEVELOPMENT

When assessing a modification application, the consent authority has a threshold decision to make and must be satisfied that what is proposed is “substantially the same” development as the original development, as set out in Section 4.55(2)(a) of the EP&A Act. Whether the development will be “substantially the same” as the original consent is a mixed question of fact and law. This decision can be guided by principles and tests established in the Courts.

Decisions of the Land and Environment Court support the proposition that the main elements of the proposal are matters substantially the same as the existing development consent, as outlined below:

Modification Principles Established by the Courts

The traditional 'test' as to whether or not a development as modified will be "substantially the same" development as that originally approved was applied by J Stein and the Court of Appeal in *Vacik Pty Limited v Penrith City Council* [1992] NSWLEC 8 and endorsed by J Bignold in *Moto Projects (No 2) Pty Ltd v North Sydney C* [1999] NSWLEC 280.

J Stein stated in the *Vacik* case: *"In my opinion 'substantially' when used in the section [s102, the predecessor of s96] means essentially or materially having the same essence".*

J Bignold expressed in the *Moto* case: *"The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified ... not merely a comparison of the physical features or components of the development ... rather ... 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)."*

J Bignold came to deal with the matter of "substantially the same" again in *Tipalea Watson Pty Limited v Kurringai Council* [2003] NSWLEC 253. From this Judgement, one can distil a list of matters or 'tests' to consider, being whether the modification involves the following:

- (a) significant change to the nature or the intensity of the use;
- (b) significant change to the relationship to adjoining properties;
- (c) adverse amenity impacts on neighbours from the changes;
- (d) significant change to the streetscape; and
- (e) change to the scale or character of the development, or the character of the locality

In 2015, the principles regarding Section 96(2)(a) (now Section 4.55(2)(a)) were summarised in *Agricultural Equity Investments Pty Ltd v Westlime Pty Ltd (No 3)* [2015] NSWLEC 75 where Pepper J set out the legal principles that apply as follows:

The applicable legal principles governing the exercise of the power contained in s 96(2)(a) of the EPAA may be stated as follows:

- 1. first, the power contained in the provision is to "modify the consent". Originally the power was restricted to modifying the details of the consent but the power was enlarged in 1985 (North Sydney Council v Michael Standley & Associates Pty Ltd (1998) 43 NSWLR 468 at 475 and Scrap Realty Pty Ltd v Botany Bay City Council [2008] NSWLEC 333; (2008) 166 LGERA 342 at [13]). Parliament has therefore "chosen to facilitate the modification of consents, conscious that such modifications may involve beneficial cost savings and/or improvements to amenity" (Michael Standley at 440);*
- 2. the modification power is beneficial and facultative (Michael Standley at 440);*
- 3. the condition precedent to the exercise of the power to modify consents is directed to "the development", making the comparison between the development as modified and the development as originally consented to (Scrap Realty at [16]);*
- 4. the applicant for the modification bears the onus of showing that the modified development is substantially the same as the original development (Vacik Pty Ltd v Penrith City Council [1992] NSWLEC 8);*



5. the term “substantially” means “essentially or materially having the same essence” (Vacik endorsed in *Michael Standley at 440 and Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280; (1999) 106 LGERA 298 at [30]);
6. the formation of the requisite mental state by the consent authority will involve questions of fact and degree which will reasonably admit of different conclusions (*Scrap Realty at [19]*);
7. the term “modify” means “to alter without radical transformation” (*Sydney City Council v Ilene Pty Ltd* [1984] 3 NSWLR 414 at 42, *Michael Standley at 474*, *Scrap Realty at [13]* and *Moto Projects at [27]*);
8. in approaching the comparison exercise “one should not fall into the trap” of stating that because the development was for a certain use and that as amended it will be for precisely the same use, it is substantially the same development. But the use of land will be relevant to the assessment made under s 96(2)(a) (Vacik);
9. the comparative task involves more than a comparison of the physical features or components of the development as currently approved and modified. The comparison should involve a qualitative and quantitative appreciation of the developments in their “proper contexts (including the circumstances in which the development consent was granted)” (*Moto Projects at [56]*); and
10. a numeric or quantitative evaluation of the modification when compared to the original consent absent any qualitative assessment will be “legally flawed” (*Moto Projects at [52]*).

In the recent case of *Arrage v Inner West Council* [2019] NSWLEC 85, Preston J found that there was no legal obligation to consider the circumstances in which the development consent was granted when comparing the approved development and the proposed modified development, or to consider the material or essential elements of the original development consent, neither of which are mandatory relevant matters. Rather it is the statutory provision of Section 4.55 which provides the relevant test.

Whether or not there will be increased environmental or neighbourhood amenity impacts under a proposed modified development is not a consideration as to whether or not a modification proposal is substantially the same under Section 4.55 of the EP&A Act. Authority for this position is set out in a decision of Talbot J in *Wolgan Action Group Incorporated v Lithgow City Council* [2001] NSWLEC 199 [43] in which he provides:

“Even if the present applicant is correct in that there will be a significant increase in the environmental impact ... that, nevertheless, does not necessarily preclude a conclusion that the development, to which the consent as modified relates, is substantially the same development as that already permitted. The extension ... alone does not change the inherent character of the development itself. There may be some additional environmental impact but that is a matter to be considered as part of the deliberations on the merits.”

Modification Principles Applied to the Proposal

The proposed modifications, including the improvements within the basement level and levels above, façade updates and additional FSR and height are considered to provide for a development that is substantially the same as the development for which consent was originally granted by DA2021/2458. That is, although the proposal will result in minor modifications in the basement and levels above, and provide for an additional level, the development as a whole will appear as substantially the same in accordance with *Scrap Realty v Botany Bay City Council* [2008] NSWLEC 333. As such, the consent authority can therefore consider the application pursuant to Section 4.55(2) of the EP&A Act. In reaching this conclusion, we have considered the above principles against the proposed modifications described at Section 4 of this Statement.

A comparison between the development, as modified, and the development the subject of the original consent can conclude that whilst there is a difference in the visual appearance of the uppermost levels of the building, being primarily the addition of a second storey to Units 27 and 28 and removal of balconies for Units 5 and 6 along the eastern elevation, the contemporary architectural character of the originally approved will be maintained. Furthermore, the





additional storey and floor space are designed to complement the characteristics of the approved development to ensure the extent of the modifications will be “essentially or materially having the same essence” as the approved development (*Vacik endorsed in Michael Standley at 440 and Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280; (1999) 106 LGERA 298 at [30]*).

As detailed in the accompanying architectural plans, the proposed development works will not be substantially different when compared to the approved development. Per **Figures 4** through **11** below, the character of the development will appear as essentially the same from the streetscape, with the proposed modifications largely concentrated on the additional level above Level 4. That is, when viewed from the public domain, the bulk of changes are limited to the upper level which ensures that the overall built form will not be substantially different from that originally approved and will not create adverse visual impacts when viewed from Peel Street, Peel Lane and Taree Street.

In addition, the proposed modifications to the basement and ground floors, including adequate servicing of the basement level, addition of fire and smoke doors, redesign of walk-way levels to the ground floor, reconfiguration of bathrooms to ensure adaptability and reduction in window lengths to eastern and western facades, will result in significant improvements to the building and functionality of the development, without having a significant additional impact on the amenity to adjoining properties and the public domain.

In terms of the additional floor area, this is entirely consistent with the intent of the approved development, will not radically change the character of the development and will provide for increased amenity to the residential accommodation in a strategic location, without any adverse impact to the amenity of future occupants, surrounding developments or the streetscape. The proposed modifications will still have the same essence as the original approval and the proposed modifications will “alter without radical transformation” (*Sydney City Council v Ilenace Pty Ltd [1984] 3 NSWLR 414 at 42, Michael Standley at 474, Scrap Realty at [13] and Moto Projects at [27]*).

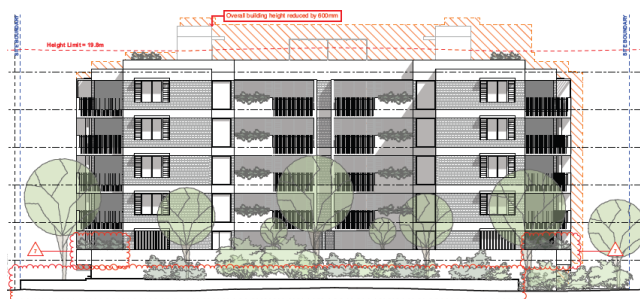


Figure 4 Approved northern elevation



Figure 5 Proposed northern elevation



Figure 6 Approved southern elevation

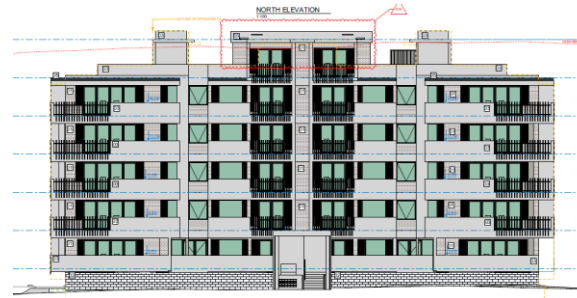


Figure 7 Proposed southern elevation



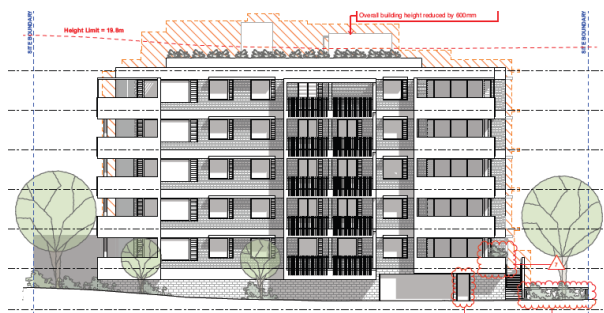


Figure 8 Approved eastern elevation

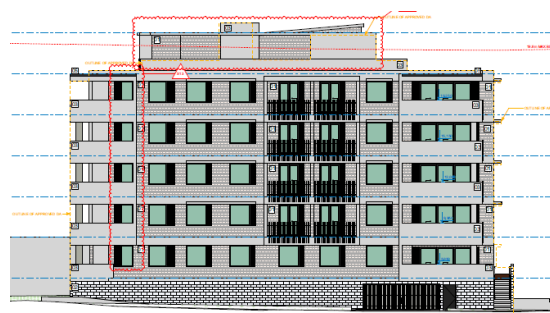


Figure 9 Proposed eastern elevation

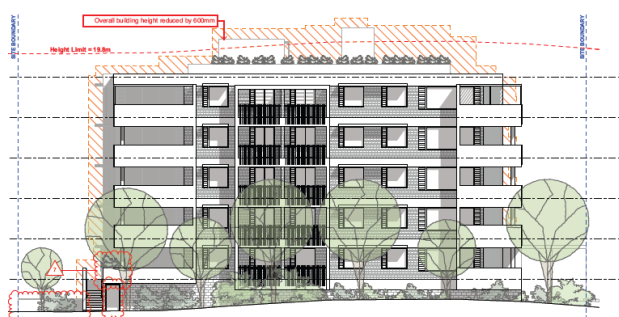


Figure 10 Approved western elevation

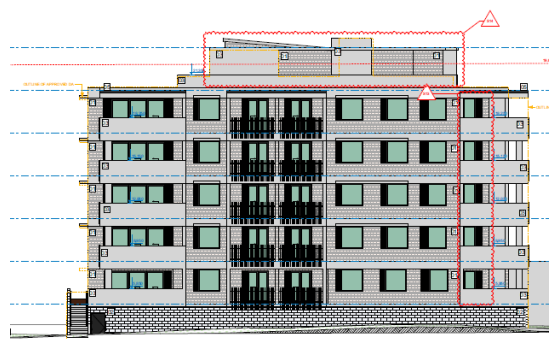


Figure 11 Proposed western elevation

The proposed modifications do not alter the approved use, which is for residential purposes in an R3 – Medium Density Residential zone. Whilst the proposal includes the addition of a second storey to Units 27 and 28, this will not result in any significant intensification of the use of the site.

With consideration to the tests identified in *Tipalea Watson Pty Limited v Kurringai Council*, the proposal as modified:

- (a) Will not change the nature or the intensity of the use;
- (b) Will not change the relationship to surrounding developments as the modifications will maintain the character of the original approval;
- (c) Where an increase in floor space and height is proposed, the development is consistent with the original approval as a whole, and the bulk and scale which establishes the streetscape character is unchanged per the original approval;
- (d) Will not adversely affect the amenity of neighbouring properties or the public domain (in terms of privacy, overshadowing and views);
- (e) Provides a high density development which is entirely compatible with the nature of development in the streetscape and surrounding locality; and
- (f) Not significantly change the scale or character of the development or the locality as the building is entirely compatible with the scale of surrounding properties.

As noted in *Wolgan Action Group Incorporated v Lithgow City Council*, an increase in environmental impacts is not a consideration as to whether or not a modification proposal is substantially the same. Nonetheless, in our view, the impact of the proposed modifications will be generally minimal when set against the backdrop of the approved building envelope, especially in terms of design and character, landscaping, privacy and solar access.

Furthermore, *Moto Projects (No. 2) Pty Limited v North Sydney Council* [1999] NSWLEC 280; (1999) 106 LGERA 298, which outlines principles for determining whether a s4.55(2) application is 'substantially the same' as an originally issued development consent. The assessment of 'substantially the same' needs to consider qualitative and quantitative matters.



In terms of a quantitative assessment, the proposed modifications will not result in an increase to the number of apartments, however, will change the GFA for the site due to the proposed additions. The site is subject to a maximum FSR of 1.1:1, inclusive of a 10% uplift, in accordance with Clause 4.4(2B) of The Great Lakes LEP 2014. DA2021/2458 was approved with a total GFA of 3,640.79 m² and an FSR of 1.66:1.

Whilst an increase is proposed when compared to the original approval, the development will not result in a significant increase of density on the site. Importantly, the strategic location and highly accessible nature of the site supports the change in dwelling mix, which is not considered to result in any adverse impacts to the surrounding locality. Of relevance, the previous application was approved with 30 apartments under DA2021/2458. The proposal seeks to retain the 30 apartments, albeit within an improved built form and diversity in apartment layout and size, and will increase residential amenity through the proposed second storey addition to Units 27 and 28.

The proposal seeks to increase the approved building height and floor space ratio to accommodate the second storey addition to Units 27 and 28 and minor increase in floor area to levels below. The subject modification seeks to increase the floor area by 175.87m² or 4.8% (over the approved), resulting in a total GFA of 3,816.66m² and an FSR of 1.74:1. Although increased, the proposed FSR is within the ambit of a Section 4.55(2) application in that the extent of change is appropriately dispersed and will not materially change the character of the development as a whole. Importantly and despite the modifications, the character of the approved development will be maintained, and the proposal will preserve the siting, location and design of the residential building. It is noted that the existing development was approved with an FSR variation of 50.8% and as such the proposed increase is not beyond what can be reasonably anticipated.

The proposed alterations and additions do not alter the overall character of the approved development. DA2021/2458 sought a variation to the 18.9m height limit as per Clause 4.3(2A) and was approved with a maximum height of 20.74m, which is a variation of 4.74% to the development standard. The subject modification includes a second storey addition to Units 27 and 28, which will be located on a similar height plane to the approved fire-stair housing and lift overrun, which have a RL of 24.050. The proposed height is calculated at RL 24.100, with a proposed maximum height of 21.63m, resulting in an exceedance of 1.83m and a variation of 9.2% to the development standard.

As detailed, the bulk and scale which has the most bearing on the streetscape are only marginally impacted, with the additional level being purposefully situated over Level 4 and located to the centre of the building for a minor portion of the building width. This ensures that the relationship of the modified development to the locality and streetscape is consistent with the approved built form. The proposal maintains the overall scale and character of the majority of the development external dimensions which has the most bearing on the public domain and remains largely unchanged.

In terms of vehicular parking, the basement level will be maintained as originally approved and will provide for 39 car parking spaces. The proposed modifications will also maintain the 6 visitor spaces and 4 trailer spaces located at-grade and accessed from Peel Lane. The total number of bicycle spaces is proposed to be reduced to 16.

Qualitatively, the relationship of the building to the public domain and adjoining properties will be maintained as approved. The proposal will retain the contemporary building form and presentation as viewed from the streetscape, with the proposed modifications not adversely impacting its relationship to the public domain. In terms of the relationship between the subject site and streetscape, including Peel Street, Peel Lane and Taree Street, the modifications are not considered to create adverse visual impacts. The bulk, scale and character of the site as established by the approved development will be unchanged. That is, the additional storey is situated where it responds appropriately to the character of the surrounding developments and locality. The modified built form is consistent with the envelope of the approved development and maintains the contemporary architectural character envisaged on the subject site. Overall, the general form and scale of the approved development will not be radically transformed and is entirely compatible with the scale of other existing and recently approved buildings in the immediate locality.

The proposal will not alter the privacy relationship to the surrounding developments or public domain, and solar access will be largely maintained as approved.





In accordance with the recent findings of *Realize Architecture Pty Ltd v Canterbury-Bankstown Council* [2023] NSWLEC 1437 (Realize Architecture (1)) and *Canterbury-Bankstown Council v Realize Architecture Pty Ltd* [2024] NSWLEC 31 (Realize Architecture (2)), the Court found that whilst there may be quantitative and qualitative differences between a modification application and original consent, the focus of the test in s4.55(2) should be holistic and assess the overall 'balance' between the original and modified development, in assessing the substantially the same test.

Whilst the quantitative and qualitative assessment, comparison of material and essential features and consideration of environmental impacts are instructive for the purposes of comparing a modification application and the original development consent, they are not mandatory. In accordance with both *Realise Architecture (1)* and (2), a holistic balance and balanced approach must be taken to the substantially the same test.

In this regard, a balanced approach has been undertaken to demonstrate that the proposal, whilst modifying certain aspects, will be in totality a development which is consistent with that originally approved. In this instance, the most critical change to the development, being the provision of an additional level, whilst resulting in minor quantitative and qualitative differences, will not result in any extensive changes to the character of the development, relationship to the streetscapes and neighbouring properties, and will have minimal adverse environmental and amenity impacts.

In conclusion, the modifications proposed by this application are considered to result in a development that is substantially the same as the development for which consent was originally granted. This proposal does not seek to alter the use or predominant built form, with the provision of a residential flat building on the site being maintained. The proposal will continue to operate under all other conditions imposed under DA2021/2458 and therefore satisfies the substantially the same test.

5.3 SECTION 4.15 ASSESSMENT

Section 4.55(3) requires consideration of Section 4.15(1)(a) of the EP&A Act, 1979 which was undertaken in the development application assessment reports and associated planning documents. The majority of the applicable Environmental Planning Instruments (EPIs) were considered in the original development application assessment reports prepared by MidCoast Council and the proposed modifications do not seek to vary the assessment or conclusions of those EPIs. Consideration of Section 4.15(1)(a) of the EP&A Act, 1979 is detailed as follows under the relevant subject headings

- State Environmental Planning Policy (Resilience and Hazards) 2021 (formerly known as SEPP No. 55 – Remediation of Land and SEPP Coastal Management 2018);
- State Environmental Planning Policy (Biodiversity and Conservation) 2021 (formerly knows as SEPP (Vegetation in Non-Rural Areas);

As such, the conclusions of the original (and subsequent) development application assessment reports remain valid and applicable to the subject modification application. The proposed modifications will alter the assessment of the relevant EPIs per the below.

5.3.1 State Environmental Planning Policy (Sustainable Buildings) 2022

SEPP (Sustainable Buildings) 2022 commenced on 1 October 2023 and aims to encourage the design and delivery of sustainable buildings.

Chapter 2 Standards for residential development—BASIX

Clause 2.1 of the SEPP states:





(5) Development consent must not be granted to development to which the standards specified in Schedule 1 or 2 apply unless the consent authority is satisfied the embodied emissions attributable to the development have been quantified.

The requirements in Schedule 1 and 2 relate to 'energy and water use' and 'thermal performance' and generally seek to minimise energy consumption and in turn reduce household expenses through reduced heating and cooling costs. The proposal seeks to achieve the best sustainability outcome as part of the residential flat building development. The application has been supported by an updated BASIX Certificate.

5.3.2 State Environmental Planning Policy (Housing) 2021

Chapter 4 Design of Residential Apartment Development commenced on 14 December 2023 and aims to improve the design of residential apartment development in NSW. The proposal has considered the design principles for residential apartment development as per Schedule 9 of the SEPP. A Development Application cannot be refused for reasons relating to ceiling heights, parking and internal apartment sizes, if the development complies with the prescribed design criteria for these matters as specified in the ADG

The below is an assessment against the considerations of the ADG which are required to be considered through the proposed modification.

5.3.3 Communal Open Space

Design criteria 1 of Part 3D of the ADG prescribes requirements relating to the area of communal open space required for residential flat buildings. The design criteria indicates that a communal open space area equal to at least 25% (548.35sqm) of the site area should be provided. The objective of the criteria is to ensure an adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.

DA2021/2458 was approved with a communal open space area of 973m² located to the north, west and south of the ground floor and to the rooftop level. The approved communal open space equated to 44.4% of the site.

The Design Guidance of the ADG states:

Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:

- *provide communal spaces elsewhere such as a landscaped roof top terrace or a common room*
- *provide larger balconies or increased private open space for apartments*
- *demonstrate good proximity to public open space and facilities*

The proposed modification includes an overall reduced communal open space due to the second storey additions to Units 27 and 28, resulting in a total communal area of 346.48m² to the roof top. Additionally, a total of 450.77sqm is provided on the ground floor, resulting in a combined total communal open space area of 797.25m², equating to 36% of the site.

The proposal meets the minimum communal open space requirements as per the ADG.

5.3.4 Great Lakes Local Environmental Plan 2014

The Great Lakes LEP 2014 applies to the subject site. Under the LEP, the subject site is zoned R3 – Medium Density Residential. The modified development is characterised as a residential flat building (which is a form of residential accommodation) and is permissible with consent in the R3 zone.

The objectives of the R3 zone are as follows:





- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To achieve increased population density in locations that support the business centre.*

The modified residential flat building component will continue to meet the objectives of the zone through the provision of providing a high quality built form which offers a variety of dwelling types to meet the needs of the community within a medium density residential environment. The proposal provides for residential accommodation which aids the increase in population density and offers proximity to services and facilities that meet the day to day needs of residents. The modified built form will present to the public domain as a contemporary development, per the original approval, with substantial articulation and vegetation. The proposal remains consistent with the objectives of the zone.

The modified development seeks to vary the building height previously considered and approved by Council. The modification proposes a maximum building height of 21.63m, which is a variation of 9.2% to the development standard.

The proposal will also seek to increase the floor space ratio in response to the second storey addition above Level 4 and minor amendments to internal floor area of each unit. The subject modification seeks to increase the floor area by 157.87m² or 4.8% (over the approved), resulting in a total GFA of 3,846.66m² and an FSR of 1.74:1. Although increased, the proposed FSR is within the ambit of a Section 4.55(2) application in that the extent of change is appropriately dispersed and will not materially change the character of the development as a whole. Importantly and despite the modifications, the character of the approved development will be maintained, and the proposal will preserve the siting, location and design of the residential building. It is noted that the existing development was approved with an FSR variation of 50.8% and as such the proposed increase is not beyond what can be reasonably anticipated.

5.3.5 Clause 4.3 – Height of Buildings

Clause 4.3 of Great Lakes LEP 2014 stipulates that a maximum height of buildings of 19.8m applies to the subject site, in accordance with Clause 4.3(2A), which allows for the height of a building to exceed the maximum height shown for the land on the Height of Buildings Map by 10% if the land is in Zone R3 Medium Density Residential. The approved development comprised of a maximum building height of 20.74, breaching the control by 0.94m, resulting in a variation to the development standard of 4.74%.

The subject modification application seeks to increase the height of the development to provide for a maximum height of 21.63m, breaching the control by 1.83m, resulting in a variation to the development standard by 9.2%. Provided in Table 2 below is a comparison between the approved and proposed maximum building heights:

Table 2 Comparison of approved and modified building height			
	Approved Building Height	Modified Building Height	Extent of Increase
Maximum Height – 19.8m (additional 10% as per Clause 4.3(2A))	20.74m to lift overrun, breaching control by 0.94m, resulting in a variation of 4.74%	21.63m	Increase of 1.83m to RL 24.010 to highest point of proposed addition, resulting in a variation of 9.2%.



As detailed, the increase in the maximum building height results from the addition of a second storey component to Units 27 and 28 above the fourth floor. The proposed modification application is considered to remain consistent with the approved height breach and notes the following:

- a. The height variation is attributed to the accommodation of a second storey component to Units 27 and 28, increasing overall residential amenity to future occupants of the development and increasing the diversity of apartments.
- b. It is considered that there is an absence of any impact of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character. Specifically,
 - i. As demonstrated in the accompanying shadow diagrams, the extent of non-compliance creates minimal additional overshadowing to neighbouring properties;
 - ii. The height breach does not result in any significant view impacts, and
 - iii. The area of the height breach will have no greater impact on the privacy of adjoining properties when compared to a complying scheme.
- c. The increase in maximum building height is purposefully designed within the approved building envelope and is strategically located to the centre of the building. The additional building height is reasonably offset through the building envelope.
- d. The location of the building height, whilst exceeding the development standard, is consistent with the bulk, scale and character of nearby residential flat buildings to the north-east and east of the site on Manning Street.
- e. The provision of the additional building height will complement the medium density character of the immediate area, which directly adjoins R4 – High Density Residential zoned land across Peel Lane. The additional height will not appear visually obtrusive or out of character with the locality. The modifications will maintain an appropriate transition of density from the medium to high density.
- f. The proposal will not result in any adverse impacts to the amenity of the public domain or surrounding properties, including views, privacy or solar access.

In accordance with *Gann & Anor v Sutherland Shire Council [2008]*, where the Court held that despite a SEPP No. 1 Objection (or Clause 4.6 variation) not being required, Section 4.55(3) of the EP&A Act still requires the consent authority to take into consideration those matters referred to in Section 4.15 of the EPA Act, including the objectives of the development standard. This assessment of the objectives is undertaken below.

(1) *The objectives of this clause are as follows—*

- (a) *to ensure that the scale of proposed buildings is compatible with the existing environmental character and the desired future urban character of the locality,*
- (b) *to encourage residential development that is consistent with AS 4299–1995, Adaptable housing.*

Objective (a): “to ensure that the scale of buildings is compatible with the existing environmental character and the desired future urban character of the locality”

The desired future character of the neighbourhood is subjective and can be set by the approved development under DA2021/2458, and existing development to the north-east and east of the site. The subject site is zoned R3 – Medium Density Residential and is adjacent to R4 – High Density Residential with a permissible height of 30m. Whilst it is a different zoning and height, the existing buildings sit within the same visual catchment and will be read together. This coupled with the location in proximity to the Tuncurry Town Centre sets a different context to consistent heights in the lower density zones.

The proposed development will be largely reflective of the approved height, only marginally exceeding the approved fire stairs and lift overrun. Given the design of the proposal, the roof top addition will only be read from limited locations and will be setback from the podium below so will appear as visually recessive. The variation to the height will allow

for a variation in building heights which will create a more interesting skyline, provide greater amenity for the occupants and have no significant impacts on the amenity of adjoining properties. At the very least, the proposed development is considered compatible with the scale of existing and surrounding buildings and is considered entirely reasonable in this instance.

Objective (b): “to encourage residential development that is consistent with AS4299-1995, Adaptable housing”

This objective is satisfied as the Development Application is accompanied by architectural plans and an accessibility review confirming the installation of a lift within the building and consistency with the requirements and technical specifications of Australian Standard AS4299: Adaptable Housing. No changes to approved nominated adaptable units are proposed.

As such, the modified proposal continues to be entirely consistent in relation to the objective of the building height development standard, despite the numerical variation proposed. Given that compliance with the zone and development standard objectives is achieved, insistence on strict compliance is considered to be unreasonable and unnecessary in the circumstances. The proposal is compliant with the relevant objectives, will create negligible environmental impacts and will provide for a variety of housing opportunities within a highly suitable location. The proposal is therefore justified on environmental planning grounds.

Therefore, on balance, the proposal is considered to achieve a planning purpose of enhancing amenity and building efficiencies in the absence of any additional or new adverse impacts.

5.3.6 Clause 4.4 – Floor Space Ratio

Clause 4.4 of Great Lakes LEP 2014 stipulates that an FSR of 1.1:1 applies to the subject site. The original development was approved with an FSR of 1.66:1, breaching the control by 1,228.05m², resulting in a variation to the development standard of 51%.

The subject modification application seeks to increase the floor area of the development to provide for a total GFA of 3,816.66m², resulting in an FSR of 1.74:1 and a variation to the development control of 58%. Provided in **Table 2** below is a comparison between the approved and proposed maximum building heights.

Table 3 Comparison of approved and modified building height			
Requirement	Approved FSR	Modified FSR	Extent of Increase
Maximum FSR – 1.1:1 (2,412.74m ² with additional 10% as per Clause 4.4(2B))	GFA – 3,640.79m ² FSR – 1.65:1 51% variation to development standard	GFA – 3,816.66m ² FSR – 1.74:1 58% variation to development standard	175.87m ² or 4.8%

As detailed, the increase in GFA results from the addition of the second storey component to Units 27 and 28 above the fourth floor, and minor amendments to the floor areas of all levels. The proposed modification application is considered to remain consistent with the approved FSR breach and notes the following

1. The proposed development will provide equitable access to all units. The proposed distribution of GFA will provide a high level of articulation and present a building that is not visually jarring or excessively bulky to the casual observer on Peel Street, Peel Lane and Taree Street when viewed in context of surrounding properties.
2. The design of the proposed building has been carefully considered and is supported by the height and scale of other neighbouring and nearby developments with similar height, bulk and scale within the R3 Medium Density

Residential zone. In addition, the site is adjacent to land zoned R4 High Density Residential with a maximum height control of 30m (i.e. 9-10 storeys) and without a floor space ratio control. The additional density for this proposal is not considered to be significant in this context and achieves a transition between higher intensity land uses to lower intensity land uses.

3. The variation to the FSR allows for GFA to be distributed to enhance the amenity of the apartments in terms of layout, ventilation and solar access. This is particularly in reference to the second storey addition to Units 27 and 28, allowing for a functional and practical distribution of floor space.
4. The proposed additional GFA is not considered to create adverse impact to the amenity of the locality, amenity of future building occupants and on the character of the immediate locality. As demonstrated in the submitted shadow diagrams the extent of the proposed modifications does not create additional overshadowing to neighbouring properties. The additional GFA does not result in any significant view impacts, especially due to the siting of the proposed second storey addition to Units 27 and 28, and will have no greater impact on the privacy of adjoining properties.

In accordance with *Gann & Anor v Sutherland Shire Council [2008]*, where the Court held that despite a SEPP No. 1 Objection (or Clause 4.6 variation) not being required, Section 4.55(3) of the EP&A Act still requires the consent authority to take into consideration those matters referred to in Section 4.15 of the EPA Act, including the objectives of the development standard. This assessment of the objectives is undertaken below.

(1) The objectives of this clause are as follows—

- (a) to ensure that the scale of proposed buildings is compatible with the existing environmental character and the desired future urban character of the locality,*
- (b) to encourage a diversity of development on land in Zone E1 Local Centre, Zone E2 Commercial Centre, Zone E3 Productivity Support or Zone MU1 Mixed Use, which is unlikely to prejudice the supply of retail or business floor space in those zones,*
- (c) to permit a floor space ratio that will provide a transition in built form and land use intensity,*
- (d) to encourage residential development that is consistent with AS 4299—1995, Adaptable housing.*

Objective (a) “To ensure that the scale of proposed buildings is compatible with the existing environmental character and the desired future urban character of the locality”.

The desired future character of the neighbourhood is subjective and can be set by the existing, recently approved and proposed buildings within the neighbourhood. The subject site is zoned R3 Medium Density Residential and is adjacent to R4 High Density Residential which does not contain an FSR development standard. This is consistent with the adopted Housing Strategy which will seek to also remove the FSR development standard from the subject site. That is, the desired future character of the site does not contain an FSR development standard making the proposed 1.74:1 largely irrelevant given this represents the adopted future direction of Council.

Whilst located in the R3 zone, FSR and height to buildings to the north in the R4 zone and town centre, the existing buildings sit within the same visual catchment and will be read together. This provides a different context to a locality that is characterised by homogenous building heights and scale and should be given weight in any consideration of character.

The proposed development takes its cues from surrounding buildings and provides a generally compliant building envelope in relation to setbacks. Whilst there are variations to the controls previously approved by Council under DA2021/2458, the resultant built form is neither visually jarring nor unfamiliar to the built form in the visual catchment of the locality.



The proposed development has adopted a highly articulated design with the additional FSR, which have been internalised within the approved built form and additional storey. The increase in FSR will allow for a scale which will create a more interesting skyline, provide greater amenity for the occupants and have no significant impacts on the amenity of adjoining properties. The proposed development is considered compatible with the approved development and the scale of existing and surrounding buildings and is considered entirely reasonable in this instance.

Objective (b) “to encourage a diversity of development on land in business zones, which is unlikely to prejudice the supply of retail or business floor space in those zones”.

This objective is not applicable to the subject site.

Objective (c) “To permit a floor space ratio that will provide a transition in built form and land use intensity”

The subject site is located adjacent to the boundary with the R4 High Density Residential zone which has a height of 30m and no applicable FSR development standard. The FSR of 1.74:1 will provide a transition in both height and scale to the R4 zone as development will permit a more gradual step up in height and scale.

Objective (d) “To encourage residential development that is consistent with AS4299-1995, Adaptable housing”.

This objective is satisfied as the Development Application is accompanied by architectural plans and an accessibility review confirming the continued installation of a lift within the building and consistency with the requirements and technical specifications of Australian Standard AS4299: Adaptable housing. Adaptable housing apartments are distributed throughout the building.

As such, the modified proposal continues to be entirely consistent in relation to the objective of the floor space ratio development standard, despite the numerical variation proposed. Given that compliance with the zone and development standard objectives is achieved, insistence on strict compliance is considered to be unreasonable and unnecessary in the circumstances. The proposal is compliant with the relevant objectives, will create negligible environmental impacts and will provide for a variety of housing opportunities within a highly suitable location. The proposal is therefore justified on environmental planning grounds.

Therefore, on balance, the proposal is considered to achieve a planning purpose of enhancing amenity and building efficiencies in the absence of any additional or new adverse impacts.

5.3.7 Great Lakes Development Control Plan 2015

The *Great Lakes DCP* applies the subject site. The proposal provides a development which is consistent with the building envelope and form of the development as approved under DA2021/2458. The following controls are required to be addressed as part of the modification applications:

5.3.8 Bicycle Parking

10.4 Alternative and Active Transport

(3) Bicycle parking is to be provided in accordance with the following:

Residential Flat Building – 1 per unit

The proposed modification works include the removal of bicycle spaces, proposing sixteen (16) bicycle spaces within the basement level parking. The proposed reduction in bicycle spaces is still considered to provide for adequate space for bicycle parking within the building. The proposal still ensures that the bicycle parking promotes alternative and active transport, whilst maintaining a safe, secure, and convenient space for bicycle parking meeting the needs of a wide range of cyclists.





The proposal remains largely consistent with the relevant DCP controls.

5.4 IMPACT OF PROPOSED MODIFICATION

5.4.1 Natural Environment

The proposal does not give rise to any significant additional environmental impacts beyond that considered and approved as part of the original application. The proposal will maintain compliance with the approved conditions of consent that are imposed to minimise all environmental impacts during construction and upon completion of the development.

5.4.2 Built Environment

In terms of the relationship of the proposal to the adjoining properties, the proposed modifications to the approved development will not have an adverse impact on the amenity of adjoining properties and will be entirely compatible with the built form of adjoining and nearby properties along Manning Street. The proposed alterations will not significantly impact on the streetscape or character of the area and will not increase the intensity of development at the site as the built form is largely the same as approved. Specifically, the proposed changes will continue to provide for a high quality contemporary development as originally approved, with increased residential amenity for future occupants.

When considering the additional floor area, this is designed and sited to minimise the visual impact as viewed from the public domain and achieve compatibility with the streetscape. The proposed second storey addition to Units 27 and 28 are located to the centre of the building and are not visually jarring when viewed from Peel Street, Peel Land and Taree Street.

In terms of amenity impacts, including overshadowing, privacy and views, the impact created by the proposed modifications are considered to be acceptable and consistent with the approved development. The changes will not result in any adverse privacy and overshadowing impacts to the surrounding properties. When considering views, there are no significant outlooks enjoyed across the subject site and any loss of views would be the result of the approved building envelope.

5.4.3 Aural & Visual Privacy

The In terms of aural privacy, the proposed modification has been designed to minimise, as far as practicable, the likelihood of any adverse overlooking or loss of privacy of neighbouring properties. The proposed siting of the second storey addition to Units 27 and 28 is considered to be located so to avoid potential adverse amenity impacts to future residents of the building and adjoining properties. The proposal is considered to remain acceptable in terms of aural and visual privacy impacts.

5.4.4 Views

The subject site is not in a location having significant views or vistas. Accordingly, the proposed development will not result in any loss of significant public views currently enjoyed from the public domain or loss of any private views enjoyed from an adjacent property.

5.4.5 Solar Access

Shadow diagrams of the approved and proposed development has been prepared showing a minor increase to the overshadowing impact along Taree Street and to the front yards of existing residential development along the southern Taree Street frontage. As shown below, the additional overshadowing caused by the modification increases the overshadowing impact only marginally.



The proposed development will maintain the previously approved setbacks to the site boundaries. The overshadowing created by the modification is considered to be a minor and reasonable impact which has been previously considered to be acceptable by Council, with the proposal not resulting in a significant increase when compared to the approved development. This is considered to be acceptable in this instance.

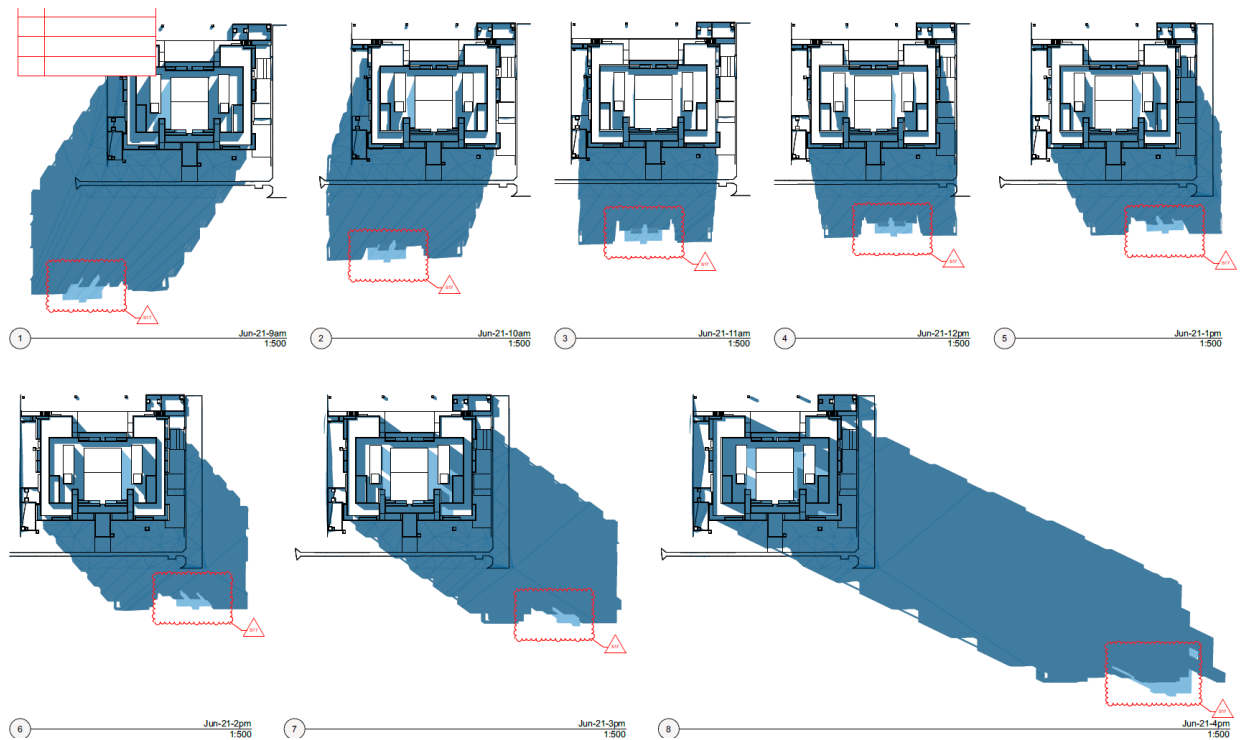


Figure 12 Additional overshadowing impact (shown in light blue)

5.4.6 Traffic and Parking Impacts

The modified proposal will have no parking or traffic implications beyond the approved development.

5.5 ECONOMIC & SOCIAL IMPACTS

The proposed development will result in an increase in the diversity of available housing stock in the locality by the provision of a high quality residential development. The proposed development will utilise existing infrastructure including electricity, sewer, water and telecommunications services.

Undertaking the demolition and construction works will have some short term positive economic impacts through employment generation, both direct employment and multiplier effects. Accordingly, it is considered the proposed development is likely to only have positive social and economic impacts on the locality.

The proposed modifications will not have any significant impact on the social dynamic of the locality.





5.6 THE PUBLIC INTEREST

This modification application has been designed to better relate to the context of the site and has been specifically modified to improve the interface to the public domain, therefore responding to the desired future character of development in the area as anticipated by the R3 – Medium Density Residential zoning and development standards.

The proposal will contribute to the supply and variety of dwelling types with the building being designed to improve the arrangement and design of open spaces, apartments and building envelope. The amended proposal will provide a built form that is articulated, modulated and integrated with the landscaping that will result in a high quality built form that is compatible with the existing and desired future character of the locality.

The modified development will maintain a total of 30 apartments, considerable landscaping and a built form respective of the character of the locality. Whilst the proposal seeks approval for an additional storey to Units 27 and 28, the massing and design ensures an acceptable impact to the character of the surrounding locality. The provision of the additional storey within a high quality contemporary building in a highly accessible location should be considered in this application.

The modification will not have a demonstrable adverse impact on the amenity of neighbouring properties beyond what was originally approved. The amended application is consistent with the objectives and intent of relevant planning provisions, including the core development standards, unless identified and suitably justified within this Statement.

Accordingly, the proposed development is considered to be in the public interest.





6. Conclusion

This Statement of Environmental Effects accompanies an application pursuant to Section 4.55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) which seeks to modify the approved development under DA2021/2458 at No. 1 Peel Street and 1-3 Taree Street, Tuncurry.

The proposed modifications will result in a high level of amenity for the future residents of the site without significantly affecting the amenity of existing adjoining and nearby properties.

The modifications are consistent with the objectives and controls of the Great Lakes LEP 2014 and Great Lakes DCP with the exception of maintaining variations to the building height and FSR development standards and will not introduce any adverse built or natural environmental impacts over and above the approved development.

Accordingly, for the reasons outlined in this Statement, we respectfully request that Council modify the development consent to incorporate the proposed changes detailed in this report and accompanying plans.

