



21 November 2018

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The General Manager
Bayside Council
PO Box 21
ROCKDALE NSW 2216

**RE: APPLICATION FOR MODIFICATION 2016/276
4 INNESDALE ROAD, WOLLI CREEK**

Dear Sir/Madam

This submission is written on behalf of VP1 Pty Ltd. It accompanies an application to modify the above development consent at 4 Innesdale Road, Wolli Creek (the **site**) pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 (the **Act**).

The development consent proposed to be modified is for the construction of a six storey boarding house comprising 38 boarding rooms, rooftop communal open space and ground level parking and demolition of existing structures. Following a recommendation of approval by the Bayside Council (the **Council**) planning officers, the former Sydney East Joint Regional Planning Panel (**Sydney East JRPP**) granted development consent to the application (DA 2016/276) on 14 November 2016.

A detailed list of the proposed modifications sought is at Section 3 of this report. This report has been prepared pursuant to Clause 115 of the Environmental Planning and Assessment Regulation 2000 (**Regulations 2000**). The purpose of this submission is to:

- describe the site and identify the consent;
- demonstrate that the proposed modifications result in a minimal environmental impact;
- demonstrate that the proposed modifications result in a development that is substantially the same as that approved in the original consent; and
- address the proposed to be modified development under the matters for consideration at Section 4.15 of the Act.

It should be read in conjunction with the following submitted separately:

- Amended Architectural Drawings by Provident Homes.

Landowners consent will be submitted separately. An amended Construction Certificate (**CC**) will be sought separately as/when required.

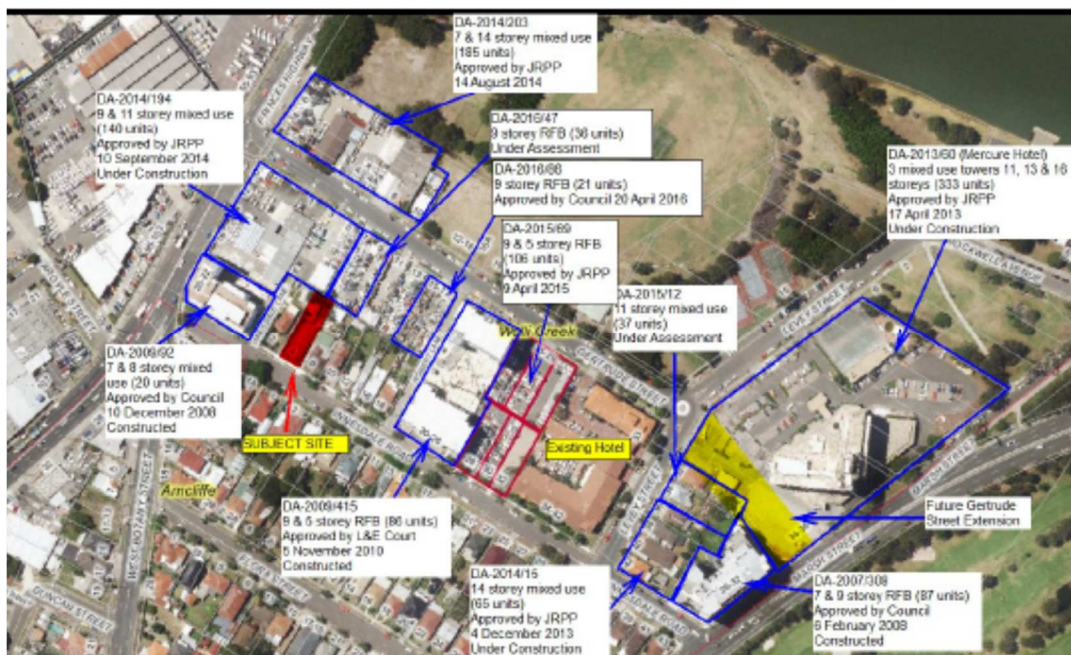
1. The Site and Surrounds

As described by Council in their report:

The subject site is zoned R4 high density residential and is currently occupied by a single storey detached dwelling house with associated outbuildings and vegetation. The proposal is the first DA proposed within the existing row of dwellings, being 2 – 18 Innesdale Road which are all zoned for high rise residential development. The site has a frontage of 12.19m to Innesdale Road and total site area of 519.5sq/m. The subject site slopes slightly to the rear, by 0.89m.

To the east and west the site is adjoined by single storey detached residential dwellings with associated outbuilding structures. Along the rear boundary of the site an open box drainage reserve spans the width of the site, this is 1.22m in width.

The image below details recent approvals and proposals of adjoining and nearby properties within close proximity to the subject site.



The subject site is affected by:

- Flooding
- Class 3 Acid Sulfate Soils
- Obstacle Limitation Surface & 15.24m Building Height Civil Aviation Regulations
- Open box drainage reserve to rear of site.

Following the preparation of the original report for the approval of the DA, numerous other approvals for medium to high density residential development have occurred within the Wolli Creek redevelopment precinct, some of which are under construction.

Notwithstanding, the above site description is relied on for the purposes of this report and it is noted the site is not:

- an identified heritage item;
- within the visual catchment of identified heritage items; and
- within a heritage conservation area.

The site's existing built form does not have any aesthetic, cultural, historical, social or built form significance.

No additional information is required to enable an assessment of the proposed to be modified development.

2. The Consent to be Modified

The details of the original consent are as follows:

- application reference – DA 2016/276;
- address – 4 Innesdale Road, Wolli Creek;
- approved development – as described in the Notice of Determination (**NOD**):
 - construction of a six (6) storey boarding house, comprising 38 boarding rooms including one manager's room, rooftop communal open space and ground level parking and demolition of existing structures; and
- date of the original consent – 14 November 2016;

- date of the as modified (pursuant to the former S96) consent – 30 August 2017
- CC 160499 was issued on 9 November 2018; and
- construction works have commenced.

3. Proposed Modifications

3.1 Modification to the approved development

The proposed modifications relative to the amended Architectural Drawings by Provident Homes (shown clouded red and coloured green) comprise:

- Plan 00 (car parking and entry level):
 - change from approved colorbond rear and side fencing to a new masonry fence (top of wall RL 4.15);
- Roof terrace level:
 - new communal disabled (complying with AS 1428.1) toilet and structure adjacent to the lift and stair access / overrun;
- Southern elevation:
 - change of material to façade.

The proposed to be modified development does not increase the approved built form's overall maximum height of 22.3m (RL 23.8 to the top of the lift/stair overrun). The structure required for the disabled communal rooftop toilet has a maximum height of RL 23.

A minor increase in gross floor area (**GFA**) of 6m² is proposed as a result of the proposed disabled communal roof terrace level toilet. The proposed to be modified floor space ratio (**FSR**) is 2.49:1 (DA approved 2.48:1), which is still less than 2.7:1 as technically permitted.

Other than the above, the approved building envelope and number of boarding rooms and associated amenities and facilities remains unaltered.

The applicant also seeks to change the site's nominated street address from 4 Innesdale Road to 6 Innesdale Road. It is our understanding there is no legal impediment to this proposed change of address, given that currently 6 Innesdale Road does not exist.

3.2 Modification of the consent

The proposed modifications as described at Section 3.1 necessitate the following modifications to the NOD for DA 2016/276

- modification of the list of approved architectural drawings at Condition 2 (as previously modified).

3.3 Reason for modification

- to modify the reference to Condition 2 in relation to the relevant architectural drawings;
- to accurately describe the site's proposed to be modified development (refer Section 3.1);
- to delete the superseded architectural drawings from the NOD; and
- to refer to the approved as modified architectural drawings.

4. Substantially the Same Development

Section 4.55(2) of the Act states:

'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:

- 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*
- 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 proposed to be modified development is entirely consistent with the provisions of Section 4.55(2) of the Act for the following reasons:

- the proposed to be modified development is still substantially the same development that was originally approved (i.e. equal/equivalent to) by Council under DA 2016/276 (**satisfaction of subclause (a)**) as:
 - it maintains the integrity and intent of the original consent and the previously modified consent;
 - it maintains the approved six storey boarding house comprising 38 boarding rooms including one manager's room, rooftop communal open space and ground level parking;
 - it maintains the approved communal amenities and facilities (55m² north facing communal room with accessible terrace and 80m² north facing rooftop communal terrace area) within the boarding house and does not alter the provision of adaptable boarding rooms and continuous paths of travel to rooms and common amenities and facilities;
 - NSW legislation requires boarding houses to be operated under a boarding house operational and management plan. This ensures the ongoing use will be consistent with the operational and management plan for the boarding house. Therefore, impacts to adjacent properties can be mitigated. Furthermore, the plan ensures appropriate levels of maintenance of the built form to retain its positive contribution to the character of the locality;
 - the presentation to the site's Innesdale Road frontage remains unaltered as do its external environmental impacts;
 - compliance with the key FSR density standard (2.49:1 proposed v 2.7:1 standard) is maintained;
 - the new roof level structure (disabled communal toilet) is lower than the lift overrun and stair enclosure and therefore does not perceptibly add to the built form's envelop, bulk and scale;
 - new external materials and finishes complement those previously approved;
 - an improved boundary fence condition is proposed;
 - the approved number of car parking, bicycle and motorcycle spaces remains unaltered;
 - the provision of open space and landscaping remains unaltered;
 - approved vehicular access arrangements via Innesdale Road remain unaltered;
 - the boarding house sits comfortably within its existing and likely future built form context;
 - setbacks remain consistent with that approved;
 - all other elements of the approved DA remain unaltered or amended through the CC as required by relevant conditions; and
 - the external impacts of the proposal are therefore like that already considered appropriate by Council and the former Sydney East JRPP in the original approval.
- there is no requirement to consult with any relevant Minister, public authority or approval body (**satisfaction of subclause (b)**);

- the Council will consider submissions made (if any) during the period of public exhibition/notification (**satisfaction of subclause (c)**); and
- the Council will afford the applicant to respond to submissions (as/if required in **satisfaction of subclause (d)**).

5. Statement of Environmental Effects

Section 4.55(3) of the Act states that:

‘In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.’

Section 4.15(1) of the Act states:

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:*
 - (i) any environmental planning instrument, and*
 - (ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and*
 - (iii) any development control plan, and*
 - (iii) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) the suitability of the site for the development,*
- (d) any submissions made in accordance with this Act or the regulations,*
- (e) the public interest.*

Each of these matters is considered in relevant detail overleaf.

5.1 S4.15(1)(a) Statutory considerations

The following environmental planning instruments and development control plan are relevant to the proposed to be modified development:

- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (**BASIX**);
- State Environmental Planning Policy No. 55: Remediation of Land (**SEPP 55**);
- State Environmental Planning Policy No. 65: Design Quality of Residential Apartment Development (**SEPP 65**) and the SEPP 65 Apartment Design Guide (**ADG**);
- State Environmental Planning Policy (Affordable Rental Housing) 2009 (**SEPP 2009**);
- Rockdale Local Environmental Plan 2011 (**LEP 2011**); and
- Rockdale Development Control Plan 2011 (**DCP 2011**).

An assessment of the proposed to be modified development against the relevant provisions of the above instruments and guidelines follows below.

5.1.1 BASIX

A current BASIX certificate is required as part of the CC documentation. The proposed modifications will not preclude the built form from complying with the relevant requirements of BASIX.

5.1.2 SEPP 55

A detailed assessment of the originally approved development against the provisions of SEPP 55 was undertaken, and which found the now approved development to provide for an appropriate planning outcome and the site suitable for its residential land use. The proposed to be modified development does not alter the findings of Council in this regard.

5.1.3 SEPP 65 and the ADG

The provisions of SEPP 65 and ADG not apply to the proposed to be modified development as the boarding house was approved pursuant to the provisions of SEPP 2009 and LEP 2011 does not contain any provisions which require boarding houses to be assessed against the provisions of SEPP 65 and the ADG.

5.1.4 SEPP 2009

An assessment of the now approved DA (2016/276) was undertaken against the relevant provisions of SEPP 2009. The assessment found the now approved development to be consistent with the relevant provisions of SEPP 2009. In this regard, the proposed to be modified development does not alter the findings or assessment as it:

- the site is within the R4 High Density Residential zone and therefore the provisions of SEPP 2009 apply;
- complies with the maximum FSR standard at Clause 29(1)(c). The additional GFA through the proposed communal disabled toilet on the rooftop terrace still maintains compliance (2.49:1 proposed v 2.7:1 standard);
- maintains the built form's overall maximum height. Whilst it technically departed from the height of buildings standard at Clause 29(2)(a), which refers to the height of buildings standard at Clause 4.3 of LEP 2011, the new works whilst contained above the height standard are nonetheless lower than the approved maximum height. Refer to Section 5.2 for further information;
- does not alter the approved solar access arrangements to the communal living room. Compliance with Clause 29(2)(c) is maintained;
- does not alter the provision of private open space throughout the site. Compliance with Clause 29(2)(d) is maintained;
- maintains compliance with the car parking requirements at Clause 29(2)(e);
- does not alter the internal size of the approved boarding rooms or provision of facilities/amenities within. Compliance is maintained with Clause 29(f)(i), Clause 29(3), Clause 30(1)(b), Clause 30(1)(c) and Clause 30(1)(d);
- maintains the approved communal living room as required by Clause 30(1)(a);
- a boarding house manager room is maintained (as approved) in compliance with Clause 30(1)(e);
- maintains the approved bicycle and motorcycle spaces in compliance with Clause 30(1)(h).

Considering the above, except for the location (relative to height, the maximum of which remains unaltered) of the communal disabled toilet, the proposed to be modified development is entirely consistent with all relevant provisions of SEPP 2009. Justification for the maintained height departure is provided at Section 5.2.

5.1.5 LEP 2011

An assessment of the now approved DA (2016/276) was undertaken against the guidelines of LEP 2011. The assessment found the proposal to be generally consistent with the provisions of LEP 2011 and where it departed from its provisions, an appropriate planning outcome without adverse environmental impacts was provided. The proposed to be modified development does not alter the findings as it:

- is permissible with development consent;
- is consistent with the objectives of the R4 High Density Residential zone;
- maintains the built form's overall height. The approved built form departs from the height standard at Clause 4.3. The new works (structure for the communal disabled toilet) whilst contained above the height standard are nonetheless lower than the approved maximum height. Refer to Section 5.2 for further information;

- does not require compliance with the FSR standard at Clause 4.4 as the provisions of Clause 29(1)(c) of SEPP 2009 override, the LEP 2012 standard. It is noted the approved and proposed to be modified development comply with the SEPP 2009 FSR standard;
- is consistent with the relevant local provisions relating to acid sulfate soils at Clause 6.1, earthworks at Clause 6.2, airspace operations at Clause 6.4, flood planning land at Clause 6.6, stormwater at Clause 6.7 and essential services at Clause 6.12;
- is environmentally acceptable; and
- providing for an equitable and appropriate planning outcome that does not result in material environmental impacts to neighbouring properties and the surrounding public domain.

The proposed to be modified development does not alter Council's original assessment.

5.1.4 DCP 2011

Given that Council (via the former Sydney East JRPP) has already approved the site's redevelopment and as the proposed to be modified building envelope is not dissimilar to that approved, it is considered the proposed modifications will not materially alter the previous assessment of the now approved development under DCP 2011. Additional justification is provided for the new works above the height limit at Section 5.2.

5.2 S4.15(1)(b) Impact on the environment

5.2.1 Height

A maximum building height of 17.5 metres applies to the site pursuant to the provisions of Clause 4.3 of LEP 2011.

The proposed to be modified development does not increase the approved built form's overall maximum height of 22.3m (RL 23.8 to the top of the lift/stair overrun). The structure required for the disabled communal toilet has a maximum height of RL 23 and which exceeds the LEP 2011 height standard. The approved bulk and scale of the building remains ostensibly the same (i.e. the same or equivalent of that already approved) when viewed from the surrounding public domain.

Notwithstanding the above, the proposed to be modified development departs from Clause 4.3 of LEP 2011. The additional departure relative to building works (not an increase in height) is acceptable in this instance for the following reasons:

- the height of the building is less than that now technically permitted on all properties to the site's south (opposite side of Innesdale Road) resulting from recent amendments to LEP 2011. These properties are provided with a height standard of 26.5m. The built form is therefore substantially less than that expected directly opposite the site;
- the non-compliance relates to a feature (communal rooftop disabled toilet) of the property which will enhance amenity particularly for those who are disabled;
- it has been demonstrated that the proposal will not result in any material environmental impacts to the adjoining and adjacent properties, particularly in terms of overshadowing, aural and visual privacy, solar access and natural ventilation, and views and vistas;
- the requirement for all habitable areas (including the accessible lift at the entry / foyer level) to be located above the 1 in 100 year flood level of RL 2.85 is a direct consequence and has added to the now approved building's overall height;
- the height of the building is consistent with that approved on neighbouring properties with frontage to the northern side of Innesdale Road. Its height is still nonetheless lower than numerous buildings within the Wolli Creek redevelopment precinct;
- it has been previously demonstrated the height of the building does not preclude redevelopment of the neighbouring properties for a similar density or land use;
- the proposal complies with the relevant FSR standard and all other relevant standards within SEPP 2009 and LEP 2011 relating to boarding houses;
- that element (the communal disabled toilet on the roof terrace) which departs from the standard does not materially add to the building's height, bulk and scale as it is integrated and provided adjacent to higher and larger structures and accounts for a limited portion of the building footprint;

- the overall design sits comfortably within the established and likely future built form context;
- the visual catchment contains several buildings that will present a similar or greater bulk and scale and which will set the character to a large degree. Consequently, the non-compliance with the standard does not result in a scale of building that is out of character with the surrounding development and the emerging character;
- within this context, the site can accommodate the height proposed and the development is of an intensity and scale commensurate with the evolving character and the prevailing urban conditions and capacity of the locality;
- the development is consistent with the provisions of orderly and economic development; and
- the building provides an appropriate design response that is consistent with other redeveloped properties within the surrounding locality that provide similar accommodation within the same land use zone or a land use zone that enables higher and more dense development.

Council in its report to the former JRPP stated relative to height, built form and context:

The proposal has been designed to present as a 4 storey building to Innesdale Road, with levels 5 / 6 and the rooftop communal open space area recessed further into the site from lower levels. Recessing the upper levels of the development minimises the bulk, height and scale of the development when viewed from Innesdale Road and allows the proposal to provide a sympathetic built form response to the low density residential nature of dwellings on the southern side of Gertrude Street.

Planting is proposed forward of the southern extent of the recessed rooftop communal open space area on site, comprising shrubs and groundcovers with a mature height of 1.5m. The proposed landscaping will assist in softening the appearance and extent of the development.

The proposal is compatible with the approved and emerging character of the R4 high density zone and sympathetic to the low density area opposite the site. The proposal was supported by the Design Review Panel and provides for a satisfactory streetscape response.

It is noted there is public benefit in maintaining standards. However, there is public interest in maintaining a degree of flexibility in specific circumstances. In the current case, compliance with the height of building standard has already been relaxed and requiring compliance for the proposed to be modified works would serve no planning purpose.

Based on the above the proposed to be modified development results in an appropriate planning outcome relative to its environmental impacts and improved environmental performance.

5.2.2 Built form, local context and scenic quality

The key to the project is how appropriate is the building design and how is its visual impact ameliorated. The proposed to be modified does not materially alter the approved building envelope and its surrounds. The approved and proposed to be modified built form fits with the prevailing form, bulk and scale of the surrounding built form. Relative to urban context, the following is noted:

- the building envelope is not materially altered from that existing;
- through an appropriate design response, it does not cause any material impacts to the adjoining properties or the public domain;
- curtilage to adjacent properties is maintained;
- landscaping is maintained;
- high quality and durable finishes are maintained / proposed which positively contribute to the character and visual amenity of the locality;
- a high level of urban, architectural and landscape design (relative to the land use) is maintained ensuring a good standard of amenity; and
- quality integrated landscaping is maintained.

Considering the above, the external impacts of the proposed to be modified built form are like that originally approved by Council.

5.2.3 Impacts on adjoining properties

5.2.3.1 Views

As the proposed to be modified development does not materially alter the approved building envelope, existing views and vistas from the adjacent properties would be retained as originally determined by Council in its assessment of the now approved DA.

5.2.3.2 Overshadowing

As the proposed to be modified development does not materially alter the approved building envelope, the overshadowing impacts of the built form which were satisfactory in the assessment of the originally approved development on the site will be satisfactory.

5.2.3.3 Privacy

The proposed to be modified development does not materially alter the approved building envelope. The 6m² of additional GFA relates solely to the provision of an accessible toilet at the roof terrace level. Therefore, the aural and visual privacy impacts of the proposed to be modified development are not dissimilar to that already considered acceptable by Council in its approval of the original DA.

5.2.4 Safety and security

The modified development provides architectural, landscape and spatial interest and a clear address. It maintains safety and security internal and external to the site. Improved fencing to the site's side and rear boundaries is proposed, which will in turn enhance safety and security.

5.3 S4.15(1)(c) The suitability of the site for the proposed development

Council in its report of the now approved DA stated:

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. The subject site is located within 800m of Wolli Creek Railway Station and within close proximity to 3 bus stops of bus route 422 Kogarah to City via Newtown. The property is also located within close proximity to retail i.e. Woolworths, Sydney international airport and public recreational areas. The subject site is considered to be ideally located to provide for a low cost affordable housing alternative for residents within Wolli Creek.

There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development. The site is considered to be suitable for the proposed development

In addition to the above:

- the building envelope is not materially altered from that approved;
- an appropriate curtilage to adjacent properties has been maintained;
- the site's size and dimensions are appropriate for the accommodation of the proposal;
- the site is fully serviced and existing services can be extended to accommodate as/if required;
- there are no environmental factors or otherwise that would deem the land incapable of the proposal; and
- it will not result in adverse environmental impacts to adjacent properties or surrounding public domain.

5.4 S4.15(1)(d) Any submissions made in accordance with the Act of Regulations

Should the proposed to be modified development be notified to surrounding properties, it is assumed that Council will consider the submissions made. Furthermore, if submissions are received, it is assumed that Council will enable the applicant to respond to submissions (as/if required).

5.5 S4.15(1)(e) The public interest

The proposed to be modified development is in the public interest as it permits an appropriate modification with minimal environmental impact of DA 2016/276.

Council in its report stated relative to the public interest:

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the development application, the

proposal will allow the development of the site in accordance with its environmental capacity. The proposed building is a high quality building that will add architectural value to the existing streetscape. Furthermore, the proposal does not create unreasonable impacts on surrounding properties and was supported in principle by the Design Review Panel. As such it is considered that the development application is in the public interest.

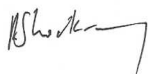
6. Conclusion

The proposed modifications provide for an equitable planning outcome and primarily reflects the intent of the original approval of DA 2016/276 (and that as previously modified). Consequently:

- the form and content of the proposed to be modified development is substantially the same as the original consent;
- the proposed modifications will have a satisfactory impact on the environment. The modifications:
 - are consistent with the intent of the originally approved development;
 - enable the continued provision of a much-needed alternative, low cost and affordable short term residential accommodation for the community in an area with excellent access to public transport, services, amenities and facilities;
 - enable the provision of a contemporary built form (largely as approved) which exhibits a high quality architectural and landscape design solution and which positively responds to the site's locational characteristics without adversely impacting on neighbouring properties or the surrounding public domain;
 - enables the provision of short term residential accommodation encouraging equal access to public amenities in a socially responsive manner;
 - enable the continued redevelopment of the site for a land use which is in accordance with the site's planning controls; and
 - continue the ongoing delivery of a variety of housing choice, specifically affordable low cost accommodation.

The proposed to be modified development is therefore satisfactory when assessed under the relevant matters referred to in Section 4.15(1) of the Act. As the proposed modifications satisfy the tests listed at Section 4.55(2) and (3) of the Act, they are worthy of Council's consent and it is considered appropriate that Council amend DA 2016/276 in accordance with that proposed.

Yours Faithfully



Scott Lockrey
Director