

Attachment referrals

- **DEVELOPMENT ENGINEER & LANDSCAPE**
- **ENVIRONMENTAL HEALTH**
- **HERITAGE**
- **HEALTH**
- **ECOLOGICAL REVIEW**

DEVELOPMENT ENGINEER & Landscape

An amending Stage 2 DA has been received for construction of a part 3, part 4 storey residential flat building comprising 99 apartments with basement car parking, tree removal and associated landscaping at the above site.

This report is based on the following plans and documentation:

- *Architectural Plans by Hill Thai Architects Revision A dated 28th May 2024;*
- *Traffic and Parking Assessment by Varga Traffic Planning dated 29th May 2024;*
- *Operational Waste Management Plan by Elephants Foot dated ;*
- *Landscape Design Concept by TURF, dwg's LA01-23, issue F, dated August 2024.*

GENERAL COMMENTS

The original DA approved under DA/580/2020 included engineering & landscaping conditions which will mostly still be applicable to this proposed amending DA subject to some minor changes.

The subject amending DA will generally require the provision of 3 additional engineering conditions, which will supersede conditions 24, 26, 27 & 35 in the original concept DA consent.

PARKING PROVISION COMMENTS

The amending DA contains a proposal for 98 apartments comprising of 11 x 1-Bedroom, 42 x 2-Bedroom & 45 x 3-Bedroom dwellings being an additional 23 apartments to the 75 originally approved for DA/580/2022. Parking Requirement have therefore been recalculated to account for the additional dwellings. It is noted an additional part basement level has been proposed to accommodate additional vehicle parking, which is a variation to the original proposal.

It is noted a 15% affordable housing component is included in the application so technically the lower parking rates in Part 2 Clause 19 (2f) of the Housing SEPP (2021) - Infill housing would apply as per the following:

- (e) The following number of parking spaces for dwellings used for affordable housing—*
 - (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces,*
 - (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces,*
 - (iii) for each dwelling containing at least 3 bedrooms— at least 1 parking space,*
- (f) the following number of parking spaces for dwellings not used for affordable housing—*

- (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces,
- (ii) for each dwelling containing 2 bedrooms—at least 1 parking space,
- (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,

The Affordable Housing component comprises of 4 x 1-bedroom, 2 x 2-bedroom and 9 x 3-bedroom units being a total of 15 units (15.2%).

Parking required under SEPP = $3.5(1B) + 1.6(1B-AH) + 20(2B) + 1.0(2B-AH) + 54.0(3B) + 9(3B-AH)$

= 89 spaces

Parking Under Part B7 of DCP

Part B7 of Randwick Council's Development Control Plan 2013 states the following parking rates

- 1.0 space per 1 bedroom unit
- 1.2 spaces per 2 bedroom unit
- 1.5 spaces per 3 bedroom unit
- 1 visitor space per 4 units (but none where development is less than 4 dwellings)

Parking required under DCP = $(11 \times 1.0) + (42 \times 1.2) + (45 \times 1.5) + 98/4$ (visitor)

= $11.0 + 50.4 + 67.5 + 24.5$

= 153.4

= say 153 spaces including 24 visitor spaces

Service and Delivery Parking

The DCP also states that Service and Delivery Parking is to be provided at the rate of 1 space per 50 units up to 200 dwellings, plus 1 space per 100 dwellings thereafter.

Application of the above rate would result in a requirement of two additional spaces for service and delivery resulting in a total requirement of **155 spaces** under the DCP.

Parking proposed = 155 spaces (complies)

The proposed development therefore complies with both the requirements of the Housing SEPP (89 spaces) and the DCP (155 spaces).

Motorbike and Bicycle Parking

The Housing SEPP (2021) is silent on the provision of Motorbike and Bicycle parking for infill Housing so presumably the DCP applies.

Motorbike Parking

The DCP states that Motorbike Parking is to be provided at 5% of the vehicle parking requirement.

Motorbike Parking Required = 0.05×153

= 7.7

= say 8 spaces

Motorbike Parking proposed = 8 spaces (complies)

Bicycle Parking

For Flats/multi dwelling bicycle parking to be provided at 1 space per 2 units plus 1 visitor space per 10 units.

$$\begin{aligned}\text{Bicycle Parking Required} &= 98/2 + 98/10 \\ &= 49 + 9.8 \\ &= \text{say } 59 \text{ spaces (including 10 visitor spaces)}\end{aligned}$$

Bicycle Parking proposed = 67 spaces (including 17 visitor spaces) complies

The Motorbike and Bicycle parking are therefore satisfactory.

PARKING LAYOUT COMMENTS

Access Driveway

When adopting Tables 3.1 & 3.2 in AS 2890.1, an access driveway serving 155 spaces will require a minimum width of between 6.0m and 9.0m (for Class 1A facility accessed from a Local Road).

The submitted plans indicate a driveway width of 6.57m and therefore demonstrate compliance with AS 2890.1 The position and width of the access driveway is appropriate for the amount of carspaces served.

Grades, space dimensions and parking aisle width height clearances appear to comply with AS 2890.1. The parking layout is therefore satisfactory.

It is noted the parking layout essentially remains unchanged from what was approved for DA/580/2022

WASTE MANAGEMENT COMMENTS

The provision of 98 apartments would require a minimum of 49 x 240L bins (or 18 x 660L bins) for garbage, 49 x 240L bins for recycling and approximately 7 x 240L bins for FOGO.

The application proposes 16 x 660L for garbage (equivalent to 44 x 240L bins), 38 x 240L bins for recycling, 6 x 240L bins for FOGO so generally complies with Council's requirements.

Appropriate space for Bulky waste and transport of bins has also been provided and is satisfactory.

No objections are therefore raised from a waste management perspective.

Note: Council's Waste management team have reviewed the application and additional basement and waste management plan has been submitted.

FLOODING COMMENTS

The site lies within the catchment for the Council commissioned South LGA Flood Study which does not predict the site will be impacted by flooding. The property has not been tagged as a flood control lot and no flood controls are therefore applicable to the proposed development.

The proposal is satisfactory from a flood management perspective.

DRAINAGE COMMENTS

The drainage plans reflect earlier proposals in that drainage system will be directed to

*a dispersion system (including rain gardens) along the eastern boundary to maintain natural drainage patterns to the adjacent golf course. **This is supported by Development Engineering and also reflects the desired outcome from the golf course.** The proposal is satisfactory from a drainage perspective.*

The stormwater drainage system is designed to generally replicate existing drainage patterns to ensure natural drainage is maintained to the adjacent St Michaels Golf Club.

*An on-site stormwater detention system must be provided to ensure that the maximum discharge from the site does not exceed that which would occur during **10% AEP (1 in 10 year)** storm of one hour duration for existing site conditions. All other stormwater run-off from the site for all storms up to the 1% AEP (1 in 100 year) storm is to be retained on the site for gradual release to the infiltration/dispersion system, to the satisfaction of the certifying authority.*

GEOTECHNICAL COMMENTS

Since approval of the original DA further geotechnical information has been received with the current DA indicating there is very little seepage flows/groundwater on the site. A Section 4.56 application on the original DA being DA/580/2022/A and approved by Council relaxed the tanking requirements to a degree. With the additional basement level this needed to be reconsidered as part of this application however the geotechnical report still indicates the site is unlikely to be affected by seepage flows.

Landscape Comments

Conditions 59 & 128 of DA/580/2022 approved the implementation of Landscape Plans, and while a revised scheme has now been submitted as part of this Amending DA, it will result in a superior outcome given an increase in the quantity & density of planting, as well as an improvement to the quality of open spaces to be provided to future occupants, so is supported.

Matters relating to the protection and/or removal of vegetation are already covered by conditions in other development consents so remain unchanged, with ecology matters related to ESBS, BDAR and similar already having been dealt with by other internal and external specialists in that discipline.

Should the application be approved all engineering and landscaping conditions provided for DA/580/2022 and DA/580/2022/A shall still apply except where superseded by the following conditions.

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

The requirements contained in the following conditions of consent must be complied with and details of compliance must be included in the construction certificate for the development.

These conditions have been applied to satisfy the relevant requirements of the Environmental Planning & Assessment Act 1979, Environmental Planning & Assessment Regulation 2000, Councils development consent conditions and to achieve reasonable levels of environmental amenity.

Design Alignment Levels

1. The above alignment levels and the site inspection by Council's Development Engineering Section have been issued at a prescribed fee of **\$6976** calculated at **\$63.00** per metre (as of 1st July 2024) of Jennifer St site frontage. This amount is to be paid prior to a construction certificate being issued for the development.

THE ABOVE CONDITION SUPERSEDES CONDITION 52 in the original consent DA/580/2020

Waste Management

2. The submitted operational waste management plan has not been approved a part of this consent. An amended Operational Waste Management Plan (OWMP) detailing the waste and recycling storage and removal strategy for operational phase of the development, is required to be submitted to and approved by Council's Lead Specialist Strategic Waste.

The Operational Waste Management plan is required to be prepared in accordance with Council's Waste Management Guidelines for Proposed Development and must include the following details (as applicable):

- The use of the premises and the number and size of occupancies.
- The type and quantity of waste to be generated by the development. Waste storage facilities and equipment.
- Access and traffic arrangements.
- The procedures and arrangements for on-going waste management including collection, storage and removal of waste and recycling of materials.

NOTES

- Use of Compaction will not be permitted
- Use of 1100L bins for kerbside collection is not permitted.

Further details of Council's requirements and guidelines, including pro-forma Waste Management plan forms can be obtained from Council's Customer Service Centre.

THE ABOVE CONDITION SUPERSEDES CONDITION 58 in the original consent DA/580/2020

3. The waste bin storage area/s in the basement shall be sized to contain a minimum of **18 x 660L** bins for garbage, **49 x 240L** bins for recycling and **8 x 240L** bins for FOGO waste. Plans submitted for the construction certificate shall demonstrate compliance with this requirement. Other bin sizes may be considered in the revised operational Waste Management Plan.

THE ABOVE CONDITION SUPERSEDES CONDITION 59 in the original consent DA/580/2020

Landscape Plans

4. Written certification from a qualified professional in the Landscape industry (must be eligible for membership with a nationally recognised organisation/association) must state that the scheme submitted for the Construction Certificate is substantially consistent with the Landscape Design Concept by TURF, dwg's LA01-23, issue F, dated August 2024, with both this written statement and plans to then be submitted to, and be approved by, the Principal Certifier.

THE ABOVE CONDITION SUPERSEDES CONDITION 65 in DA/580/2022

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

The following conditions of consent must be complied with prior to the 'Principal Certifier' issuing an 'Occupation Certificate'.

Note: For the purpose of this consent, any reference to 'occupation certificate' shall also be taken to mean 'interim occupation certificate' unless otherwise stated.

These conditions have been applied to satisfy the relevant requirements of the Environmental Planning & Assessment Act 1979, Environmental Planning & Assessment Regulation 2000, Council's development consent and to maintain reasonable levels of public health, safety and amenity.

Sydney Water

5. *A compliance certificate must be obtained for the amending DA from Sydney Water, under Section 73 of the Sydney Water Act 1994. Sydney Water's assessment will determine the availability of water and sewer services, which may require extension, adjustment or connection to their mains, and if required, will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator (WSC).*

Go to sydneywater.com.au/section73 or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

The Section 73 Certificate must be submitted to the Principal Certifier and the Council prior to the issuing of an Occupation Certificate.

THE ABOVE CONDITION SUPERSEDES CONDITION 122 in the original consent DA/580/2020

Landscape Certification

6. *Prior to any Occupation Certificate, certification from a qualified professional in the Landscape industry must be submitted to, and be approved by, the Principal Certifier, confirming the date that the completed landscaping was inspected, and that it has been installed substantially in accordance with the Landscape Design Concept by TURF, dwg's LA01-23, issue F, dated August 2024.*

THE ABOVE CONDITION SUPERSEDES CONDITION 128 in DA/580/2022

Environmental Health

Proposed Development:

Amending DA to the Stage 2 application to provided 15 additional dwellings to be used as affordable housing by adding additional storey to the 3 storey parts of the buildings, consolidating two northern buildings into a single building, new rooftop communal

areas, amendments to apartment mix and layouts, reconfiguration of the basement and addition of a half basement resulting in addition 32 car spaces and dedicated bicycle parking area (Height Variation).

Comments:

In December 2023 the NSW Government introduced reforms to incentivise the delivery of additional affordable housing in response to the Housing Crisis. This proposal seeks to take advantage of those reforms by seeking to amend the approved DA on the site to deliver 15% affordable housing within the development in return for a 30% uplift in FSR and a minor increase in height.

Health do not object to the proposed increase in height, but it is noted that there are a number of community submissions against the increase in height and this is not in keeping with the height restrictions from a planning perspective. This may make the proposal unsuitable.

Amending DA:

An “Amending DA” is a DA that grants consent to a new development whilst concurrently using the power under Section 4.57 of the EP&A Act to impose a condition that modifies another existing development consent. In effect, it utilises the existing consent (DA 580/2022), whilst amending components of that approval as a separate consent. Whilst this might ordinarily be done via Section 4.56 Modification, the nature of the changes proposed may in this case not be considered substantially the same development as required to satisfy the specific requirements of Section 4.56 of the EP&A Act and therefore the Amending DA is a more appropriate pathway.

The DA will be assessed by Randwick City Council and determined by the Sydney Eastern City Planning Panel (Regional Panel).

Contamination:

No changes are proposed to the approved remediation strategy required under Chapter 4. The approved development was accompanied by a Detailed Site Investigation report (DSI) dated 2 December 2022 prepared by EI Australia Pty Ltd.

Conclusion:

The new amendments do not alter Environmental health’s original findings/recommendations. Given the proposal only recommends additional affordable housing Health consider the development to be substantially the same and the original conditions for DA/580/2022 are considered adequate and no additional conditions are required.

All DA health conditions for the original DA/580/2022 remain applicable.

Recommendation:

Should the application be approved, it is recommended that a general condition requiring compliance with the conditions of consent DA/580/2022 is included in the consent as approved by the land and environment Court.

Heritage Planner

The Site

The subject site is known as 11 Jennifer Street Little Bay, and with a legal land parcel identity as Lot 11, D.P. 1237484.

This is a rectangular land parcel which fronts Jennifer Street to the west and falling slightly to the east. Its boundaries are approximately 112m to this west frontage; 80m to the north side and 110m to the south side, and then 138m at the rear east boundary. It has a total site area of approximately 1.161ha. The site has no built structures, and its existing vegetation comprises relatively undisturbed low scrub.

The precinct in which the item is located is primarily residential in character. The west side of Jennifer Street - opposite the item - is characterised by low-density single and double storey residential dwellings. To the east is *St. Michael's Golf Club*, which comprises a golf course and a single-storey club house building.

The site has no individual statutory heritage listing. However, it is located adjacent to several heritage items and conservation areas that are listed on the State Heritage Register under the NSW Heritage Act 1977, and also within Schedule 5 Parts 1 and 2 of the Randwick LEP 2012.

Background

A November 2020 initial concept DA (DA 698/2020) was refused by Council. However, in a subsequent appeal the LEC granted consent on 19 October 2022 for the development of a part 3, part 4 storey complex across the northern portion of the site, subject to specific delineated environmental considerations for the overall land parcel. In early 2024 site preparation works commenced in accordance with that consent.

In December 2023 the NSW Government introduced reforms to incentivise the delivery of additional affordable housing in response to the Housing Crisis.

This further proposal aims to take advantage of those reforms by seeking to amend the approved DA on the site to deliver 15% affordable housing within the development in return for a 30% uplift in FSR and a minor increase in height under Section 4.22 of the EP&A Act, as well as a proportionate increase in basement space.

Proposal

This DA seeks approval for amendments to the existing development consent for the following:

- An additional storey to the consented development at one portion of the build. This will increase the total number of residential units from 76 to 98.
- An increase in basement level construction to accommodate the additional car parking - from 169 to 222 - as well as an increase to waste requirements space.
- Proposed materials and finishes are contemporary in construction and appearance including metal roof sheeting (light grey); Cladding in metal and solid masonry; Concrete surfaces; Aluminium framed glazing; metal handrails and balustrading.

Submission

For the purposes of the heritage assessment of the Development Application the following documentation is submitted:

- A Full set of Architectural Plans prepared by *Hill Thalys Architecture & Urban Projects*, Foster Street Surry Hills, dated as 28 May 2024 (and received by Council 11 June 2024)
- A professional Statement of Environment Effects (SEE) prepared by *Beam Planning Pty Ltd*, dated as 31 May 2024 (and received by Council 11 June 2024)
- A professional Heritage Impact Statement prepared by *Weir Phillips Heritage and Planning*, dated as May 2024 (and received by Council 11 June 2024)
- A Schedule of External Colours and Finishes, prepared by *Hill Thalys Architecture & Urban Projects*, Foster Street Surry Hills, dated as 28 May 2024 (and received by Council 11 June 2024)
- Character Study Design Approach, prepared by *Hill Thalys Architecture & Urban Projects*, Foster Street Surry Hills, dated as 28 May 2024 (and received by Council 11 June 2024)
- A Public Domain Interface Study prepared by *Hill Thalys Architecture & Urban Projects*, Foster Street Surry Hills, dated as 28 May 2024 (and received by Council 11 June 2024)

- A professional Photomontage prepared by *Hill Thalys Architecture & Urban Projects*, Foster Street Surry Hills, dated as 28 May 2024 (and received by Council 11 June 2024)

Controls

Clause 5.10(1) of Randwick Local Environmental Plan 2012 includes an Objective of conserving the heritage significance of heritage items and heritage conservation areas, including associated fabric, setting and views.

Clause 5.10(4) of Randwick Local Environmental Plan 2012 requires Council to consider the effect of the proposed development on the heritage significance of the heritage item or heritage conservation area.

The Heritage section of Randwick Development Control Plan 2023 provides Objectives and Controls in relation to heritage properties.

Comments

This Heritage Impact Statement (HIS) has been prepared in conjunction with a Development Application (DA) for amendments to an existing development consent for residential flat buildings at No. 11 Jennifer Street, Little Bay, New South Wales. The site has no statutory listings, however, lies adjacent to items and Conservation Areas listed on the State Heritage Register and by Schedule 5 Parts 1 and 2 of the Randwick LEP 2012.

The proposed works will have no impact on the adjacent heritage items and Conservation Areas as these will continue to be generously separated from any elements of heritage significance and will not impact on any significant view corridors to and from them.

The proposed works retain the approved form, design and materiality of the buildings including their well-designed and articulated facades, which will continue to be consistent with the scale and density of contemporary style of infill that characterizes the setting of the items and HCAs.

The proposed works therefore fulfil the aims and objectives of the Randwick LEP 2012 and the Randwick DCP 2023 by improving the quality and diversity of housing options in Little Bay while respecting the heritage significance of the area in which it lies.

The site itself is not listed as a heritage conservation area, however, heritage was a contention during the Concept DA proceedings, on the basis of the potential impacts on the surrounding heritage conservation areas, namely the Kamay Botany Bay National Park Conservation Area (listed C5 in Schedule 5 of the RLEP) and Prince Henry Hospital Conservation Area (listed C6 in Schedule 5 of the RLEP). It is especially noted that in her judgement, Commissioner Bish concluded the following in relation to heritage:

‘I did not perceive that the visibility of the upper levels of the future RFB, as positioned on the site, would likely have an adverse impact to the view or setting. This is due to the significant separation of the building envelope from the National Park across the proposed biodiversity conservation area, and its positioning on the site. There is an extensive and expansive depth/height of native vegetation between the conceptual building and within the National Park. I also consider that the view (northward) from the National Park is generally towards an existing urban streetscape. A person standing in the National Park would unlikely find the screened view of the upper stories of a future building on the site as unexpected or out of visual place. I am satisfied there is no adverse impact to the setting, view or fabric of the National Park Conservation Area.

An updated Heritage Impact Statement (HIS) has been prepared by *Weir Philips*. The HIS notes that whilst visible from the National Park in certain locations, the application of 4-storeys plus roof terrace consistently across the site does not change any of the original conclusions of Commissioner Bish regarding the extent of impact or the appropriateness of being able to see an urban streetscape to the north from the national park.

The proposed additional half basement level will have no impact as the basement footprint will continue to be well removed from the boundaries of the item, with entry and exit via the approved roads, for there to be no physical impact on the item.

The proposed works will continue to be substantially separated from any listed items and will have no impact on the adjacent heritage items and Conservation Areas as they will continue to be generously separated from any elements of heritage significance and will not impact on any significant view corridors to and from them.

Therefore, for all the above reasons, there will be no impact on the ability of the public to understand and appreciate any heritage significance of this precinct.

Recommendation

The following conditions should be included in any consent:

- The colours, materials and finishes of the external surfaces to the building are to be in accordance with the Proposed Schedule of Materials, finishes and colours prepared by *Hill Thalys Architecture & Urban Projects*, Foster Street Surry Hills, dated as 28 May 2024 and received by Council 11 June 2024. Details of any changes to the proposed colours, materials and textures are to be submitted to and approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.
- This site is relatively undisturbed, and in proximity to areas of indigenous provenance. Therefore, all contractors/trades persons involved in excavation works must be formally made aware of at least the possibility of archaeological remains or Aboriginal objects. In the unlikely event that such historical archaeological remains or deposits are exposed during the works, all work should cease while an evaluation of their potential extent and significance is undertaken, and the NSW Heritage Office notified under the requirements of the Heritage Act.

Assessment officers comment: It is note that the detailed DA approval under DA/580/2022 contains conditions relevant to heritage conservation.

Sydney Airports

A referral was made to Sydney Airports however this was rejected. It is noted that the application has consent from Sydney Airports included in the lodged application package.

11 Jennifer Street,
Little Bay, NSW, 2036
18th October 2024

RE: Amending Concept DA – 11 Jennifer Street, Little Bay.

Dear Ferdinando,

This letter is provided to address a query from Randwick City Council regarding the approval process for the proposed Amending Concept DA (DA/598/2022) at 11 Jennifer Street, Little Bay, NSW, 2036.

The Stage 2 Plans by Hill Thalys (Job # 22.27, Drawing A 2.402-A 2.408) Shadow Diagram indicates that an increase of the building height will only affect a small extended portion of the protected vegetation, for a small increase in time. The extent of light reduction should not significantly affect the viability, structure or health of the Eastern Suburbs Banksia Scrub (ESBS), community.

A study of Australian coastal shrublands (Bond & Ladd, 2001) found that low light levels may limit the species richness of the understory. The article suggests that a long-lived overstorey causes an attrition of understorey species. Which is evident in long unburnt stands of ESBS that are dominated by *Leptospermum laevigatum*. Few, if any of the understorey species present in ESBS, prefer shade, and species richness beneath overstorey shrubs decreased in proportion to the shade cast from dominant canopy species.

The study also states that species diversity can be increased in low light situations with the use of a suitable fire regime.

It is Abel Ecology's belief that an increase in the height of the buildings will not adversely affect the listed vegetation community, Eastern Suburbs Banksia Scrub (ESBS), in relation to shadows and light exposure.

Therefore, Abel Ecology is of the opinion that the additional overshadowing from the proposed design is minor and should not trigger further assessment.

Kind Regards



Nicholas Tong
BAM Accredited Assessor
BAAS22012

Chris Ferreira
Head of Planning
Urban Property Group
Level 10/11-15 Deane Street
BURWOOD NSW 2134

21st August 2024

RE: Amending Concept DA – 11 Jennifer St, Little Bay

Dear Chris,

This letter is provided to address a query from Council regarding biodiversity and the proposed Amending Concept DA for the residential flat buildings approved for 11 Jennifer Street Little Bay.

Council has posited that the additional overshadowing of the Eastern Suburbs Banksia Scrub (ESBS) imposed by the proposed modification may require a revised Biodiversity Development Assessment Report (BDAR) and an additional offset commitment.

The Amending Concept DA plans prepared by Hill Thallis, dated 2nd August 2024 show the shadow from the proposed buildings falling on the adjacent retained ESBS and regenerated native vegetation at the equinox (showing the minimum impacted area) and in mid winter (showing the maximum impacted area). They also helpfully detail the area of maximum impact that has already been approved along with the additional maximum area of impact to be imposed by the modified building.

The differences between the shadow cast by the approved and the proposed building throughout the shortest day of the year illustrate that even at the time of maximum possible impact at 9 a.m. on the 21st June, shadows will extend only a few extra metres. This extra shadow retreats significantly only an hour later

Given this small extension, any impacts that may arise from this additional shadow are considered to be trivial to those impacts already assessed and approved. Importantly, the area of adjacent vegetation in this brief added shadow is currently managed under an approved Management Plan with its overarching objective being conservation. Notwithstanding their low likelihood an inconsequential scale, any additional impacts through suppression of native plant growth or favouring of additional weed growth that might occur will be controlled, as the affected area is within an actively managed patch.

Thus it is concluded that, given the minor nature and low likelihood of potential impacts, no additional biodiversity assessment or offset actions are required.

Yours sincerely,



Elizabeth Ashby
Principal Consultant

Chris Ferreira
Head of Planning
Urban Property Group
Level 10/11-15 Deane Street
BURWOOD NSW 2134

21st August 2024

RE: Amending Concept DA – 11 Jennifer St, Little Bay

Dear Chris,

This letter is provided to address a query from Council regarding the approval process for the proposed Amending Concept DA for the residential flat buildings approved for 11 Jennifer Street Little Bay. In providing this response, I have considered the Amending Concept DA plans prepared by Hill Thallis, dated 2nd August 2024.

Specifically, Council has requested clarification whether the proposal has been referred to and / or approved by the Commonwealth pursuant to the *Environment Protection and Biodiversity Conservation (EPBC) Act 1999*.

The decision to refer a proposed action to the Commonwealth under the *EPBC Act 1999* is initiated via a self-assessment procedure, as detailed in the guidelines issued by the Australian Government. If an impact to a Matter of National Environmental Significance (MNES) is considered likely to occur, then a formal Referral is required for adjudication and imposition of potential conditions. However, if it is considered by a proponent that a proposed action is not likely to impose a significant adverse impact, then there is no obligation that a Referral be made.

The original proposal was not referred to the Commonwealth as the development was considered not to impose a significant impact on Eastern Suburbs Banksia Scrub (ESBS), which is the relevant MNES.

The subsequent consent gained via the NSW Land and Environment Court appeal, the comprehensive ecological assessment provided pursuant to the NSW Biodiversity Offset Scheme, the on-site mitigations explicitly detailed in a comprehensive management plan for the retained and regenerated ESBS, all of the other conditions of consent imposed by Council relevant to ESBS, and the off-site offset obligations have both supported that initial decision and further ensured its outcome.

I note also that the NSW Biodiversity Offset Scheme has been formally endorsed by the Commonwealth government as part of an active harmonisation and streamlining of assessment processes between the different levels of government. The “Condition-setting Policy” issued in 2020 by the then Commonwealth Department of Agriculture, Water and the Environment aims explicitly to “*streamline the regulatory process by avoiding duplicative or unnecessary approval conditions between jurisdictions*”.

Notwithstanding the initial decision that a Referral is not required, as the project was assessed and approved via an accredited assessment process and consent conditions were imposed that relate directly to the MNES, this is an explicit example recognised by the Policy where a Referral would represent an unnecessary duplication.

Under separate cover I have provided an opinion that the impacts to ESBS from additional overshadowing are very minor and not consequential enough to trigger further assessment. Moreover, any such impacts are adequately managed by the current consent conditions in place and being acted upon.

Thus, the decision not to refer the proposal remains valid for the Amending Concept DA.

Yours sincerely,



Elizabeth Ashby
Principal Consultant